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The Enemies of Light

The Academic Freedom of Administrators

The Wheeldon Dismissal Hearing Report

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John Crispo

UNIVERSITY PROFESSORS: their SUPPLEMENTARY INCOME and RELATED ACTIVITIES

The author of the following essay is a Full Professor in the Department of Political Economy, University of Toronto. He is also acting director of the School of Business and Director of the Centre for Industrial Relations. Under his chairmanship, the Committee on Supplementary Income and Related Activities submitted a report last July which proposes a code of ethics with respect to activities related to full-time faculty appointments. The text of this report was published in the University of Toronto Bulletin (9 september 1971) and has appeared in the October issue of C.A.U.T. — 1971 — A.C.P.U.

This essay has been written to elaborate on the reasoning that lies behind a Report on Supplementary Income and Related Activities, prepared by a committee at the University of Toronto, of which the author was chairman. This committee was established by the Presidential Advisory Committee on the Budget, and the Association of the Teaching Staff (now the University of Toronto Faculty Association), to recommend a policy with respect to supplementary income and related activities of faculty members. Specifically, the Committee's original terms of reference were as follows:

(1) To enquire into the feasibility and desirability of summer supplements or summer salaries, and the terms and conditions for eligibility

(2) To study the extent of faculty responsibility to university duties, specifically with respect to consulting time and off-campus income

(3) To formulate proposals or recommendations on these and related matters for consideration by the faculty and appropriate university bodies.

Pursuant to this mandate, the Committee initially developed considerable preliminary data pertaining to the first of these terms of reference, that is the question of summer supplements or salaries. Information pertaining to this aspect of the Committee's work was excluded from its final report because it was subsequently agreed by all concerned that it should concentrate its attention on the issues of supplementary income and related activities.

In so doing, the Committee chose not to bring out an important facet of university fiscal affairs that will have to receive more attention in the future. In question is the role of investment budgeting in those areas of university finance where a particular expenditure can be expected directly and/or indirectly to generate more income than expense. If properly designed and implemented, certain outlays, such as for faculty summer supplements, may serve to attract more students and thus more income, thereby more than offsetting the costs involved.

Having agreed to abandon the section of its terms of reference that pertained most directly to this all-too-easily-overlooked consideration, the Committee confined its attention to issues stemming from faculty involvement in activities beyond, although often integrally related to, their continuing obligations to the University. In this context, it is worth noting at the outset that earlier attempts to resolve the many dilemmas involved in this area had not proved successful. Impetus for a renewed effort, however, had increased over the past few years in the face of such considerations as growing faculty involvement in the community's affairs, increasing signs of internal and external reservations about this involvement, and the desirability of compressing the period taken by students to earn their degrees, especially at the graduate level.

It should not be surprising that from the start the Committee realized it would be impossible to formulate detailed rules and regulations to govern all the contingencies that are bound to arise in an institution as varied and complex as the University of Toronto. None the less, it did find it possible to recommend certain broad guiding principles, with respect to supplementary income and related activities of faculty members, that should be useful and salutary. The Committee also suggested that different University divisions (i.e. departments, schools, centres, etc.) should adopt supplementary guidelines where these are deemed desirable in their own particular circumstances.

Throughout its report the Committee pursued a positive rather than a negative approach. Although the point could have been

made more emphatically, the stress is placed on full performance of the responsibilities for which one is employed as a faculty member instead of on restrictions with respect to other activities that may or may not give rise to supplementary income. These should cause concern only where they result in actual or potential conflicts of interest.

This paper begins with a description of the evolving nature of the relationship between the individual faculty member, the university and the community. In successive sections it then reviews the nature and the implications of the various forms of supplementary income and related activities available to faculty members. The remainder of the essay is devoted to policy prescriptions and means to their implementation.

The Professor in the University and in the Community

Historically, the university professor has been seen as a member of an isolated community of scholars engaged in the pursuit and dissemination of knowledge. This view is still valid in a diminishing number of disciplines.

The full-time faculty member's first responsibility must be his teaching and research. Yet many faculty members face a host of related but competing demands made on their time and effort, stemming from forces both within and beyond the university's confines. On the one hand, the growing size of the university requires more faculty participation in its administration and a greater effort to maintain meaningful individual contact with students; on the other hand. because of their expertise, numerous professors are subjected to insistent pressures to involve themselves more fully in the affairs of the community at large. Even when it comes to their own research, many faculty members find that the frontiers of knowledge that should have priority lie beyond the university. If only to remain up to date and relevant in the classroom. clinic or laboratory, numerous faculty members must play a more active role in the outside world around them.

In the face of these various pressures, the challenge is to find an appropriate balance between the competing activities that vie for the professor's time both on and off the campus. In reconciling the faculty member's internal responsibilities with the external claims on his time and talents, means must be found to ensure that nothing is allowed to interfere or give rise to conflicts of interest with his primary obligations as a university teacher and scholar. At least in the University of Toronto, a full-time academic appointment should entail a year-round commitment to the varied

duties and responsibilities of a faculty member. Complementary to these duties and responsibilities are certain freedoms and privileges, many of which pertain to the supplementary income and related activities that are the central concern of this paper. For the moment, however, it will suffice to point out that the foregoing duties and responsibilities will normally entail an appropriate combination of the following obligations:

(1) carrying out one's normal teaching load as scheduled;

(2) making oneself readily available to one's students;

(3) keeping abreast of the literature and other developments in one's field;

(4) contributing to the advance of knowledge in one's field;

(5) carrying out one's share of the formal and informal consultation necessary to assist students in their thesis work; and

(6) carrying out one's share of general administrative duties (e.g. committee assignments) within one's department, within one's university, and within the university community in general.

These duties and responsibilities are elaborated in a later part of this essay. In the meantime, it is important to clarify the nature, implications and possible approaches to the advantages and disadvantages raised by the supplementary income and related activities available to faculty members.

The Nature of Supplementary Income and Related Activities

Such income and activities derive from both within and beyond the university. Within the university itself, there are several sources of potential income over and above the individual's basic salary. Among the more important of these are remunerated clinical work, particularly in the health sciences; paid evening or summer extension teaching; university-funded summer research grants; and summer supplements for more than normal supervision of graduate students. Writing of various kinds may also give rise to additional income in the form of royalties. For the most part, these activities present no serious conflicts of interest and therefore receive little or no attention in the balance of this paper.

Outside, but sometimes channelled through the university, are a number of other activities that can provide additional income to the individual faculty member. Sponsored or contract research typically includes individual stipends as well as out-of-pocket expenses. On the non-financial side such research may be classified, thus giving rise to a special kind of problem to which reference is

made later. In some of the professional schools, faculty members maintain a professional practice, which not only helps them to keep up with developments in the application of their professional skills, but also adds to their incomes. Others, in both professional and non-professional schools, serve as consultants to public or private institutions. Whether or not the knowledge they derive from such consulting work may be used in their teaching and research was, by implication at least, a more important factor in the Committee's view, in determining if it is compatible with their university position, than how much they are paid for it.

Faculty members may also devote some time to membership on various types of advisory bodies, to contributions in the mass media, and to speaking engagements. Again, whether they are paid or unpaid for this kind of activity may not be the most important consideration. Rather, the main concern should revolve around whether such activities increase their value to the university community, or at least do not detract from it.

Finally, there are certain outside activities from which income may be derived and on which considerable time may be expended, but which the Committee felt would normally lie beyond its terms of reference. Sources of revenue such as investment income need only concern the university if an individual faculty member devotes so much time to them as to neglect his responsibility to the university. Another illustration of an outside activity generally considered to be beyond the Committee's terms of reference is political activity, a matter on which the University of Toronto already has a policy.

Implications of Supplementary Income and Related Activities

As already suggested, there are many implications arising from the increasing availability to individual faculty members of supplementary income and related activities.

On the positive side, there is, as was emphasized earlier, the increased relevance with which the faculty member can approach his subject matter. Also, there is the contribution made to the community and the much-needed goodwill such contributions can generate for the university. Not to be minimized either is the additional income derived by many faculty members from their outside activities. In the absence of such income, some divisions could not retain their present faculty members, let alone recruit new ones, since their alternative earning opportunities would be so much greater. It is in this sense that there is a saving to both the taxpayer and the fee-paying student deriving from the availability of extra income to many faculty members. If that income

were cut off, the university would doubtless have to make up a large part of the differences, or suffer a loss of faculty, in terms of both quantity and quality.

On the negative side, the most fundamental danger lies in the temptation to become so involved in the outside community as to neglect one's university responsibilities. Clearly, there is no excuse for a faculty member's committing himself to so many other activities that he cannot keep up with his on-going responsibilities to the university. Among other possible conflicts of interest is the use of university facilities to increase one's own income. This would include the marketing to outside bodies of research findings already developed within the public domain of the university, as if they were the result of an original effort on the part of the faculty member. Such cases are dealt with later in the proposed code of ethics that the Committee suggested be implemented. That code also is designed to prevent possible exploitation of the unpaid work of one's colleagues or students for personal gain.

Potential hazards also lie in the imbalances that can develop in the range of activities in which faculty members engage. These imbalances can give rise to serious misallocations of faculty resources within the university. Of particular concern at the present time is the need, dictated both by the legitimate desire to cut down on the length of time required to attain a graduate degree and by present methods of formula financing, to retain more faculty members on campus during the summer break to supervise graduate work. If other opportunities during this period remain as attractive as they now are in certain fields, it will probably prove difficult to accomplish that objective without some special incentives.

In meeting this objective, further damage could be done to the Division of Extension, which is already experiencing difficulty in recruiting an appropriate teaching staff for its summer courses. This problem could be seriously aggravated if more funds were to be made available for graduate supervision or research during the summer, especially if all or even a substantial part of such funds were subject to forfeiture by the individual if he taught a summer extension course as well.

Not to be neglected are the disparities in earnings to which supplementary income and related activities give rise. That these disparities sometimes provoke strong feelings of inequality should not be surprising. The fact is, however, that the university operates in a market economy in which some disparities are inevitable, unless the institution is willing to settle for a lower calibre of staff in those departments where the alternative income opportunities are significantly higher than the average university salary scale. Ap-

propriate reconciliation of the mixture of equity and market considerations involved requires that where there are discretionary funds available within the university, a conscious effort should be made to channel them in the direction of those unable to earn outside income.

This suggests a further implication growing out of such disparities. When the government and public become aware of the relatively large incomes of some faculty members, they are prone to generalize from the few to the many. It must be made clear that, necessary as these few exceptions may be from a faculty recruitment and retention point of view, they are not typical. Such large incomes must not be allowed to serve as an excuse for failing to raise the general level of salaries within the universities.

Possible Approaches to the Problems Posed by Supplementary Income and Related Activities

In the Committee's search for policies designed to solve real and potential problems arising from the availability to faculty members of supplementary income and related activities, it canvassed a number of possibilities. One is the present approach, which does not entail any formal policy except for guidelines that have been developed in a few departments. For reasons already suggested, the Committee did not believe this to be satisfactory. A general university policy is required.

There are a number of possibilities. At one extreme, the university could simply bar all supplementary income and related activities, or at least all outside income and activities. Aside from the fact that the faculty would not accept such an edict, it would hardly be desirable, given the many advantages flowing from such income and activities. Especially important, for reasons previously stated, is the fact that such a policy would make it difficult to recruit and retain a uniformly high calibre of faculty across the board in the university, without even wider internal salary differentials than already prevail.

Another possibility would be to impose time and/or money limitations. By implication at least, the Committee came down against any such restrictions. Opposition to such a policy could be based solely on the fact that such restrictions make no allowance for the varying market and earning power, and the differing energies and abilities, of individual faculty members. Moreover, they would be at best only partially relevant to the central issue of whether or not a faculty member is meeting his responsibilities to the university. Indeed, particularly in the form of time limitations, such restrictions could lead to pressures for a specified work day and

work week that would, if anything, militate against a more responsible faculty attitude towards its obligations to the university. Nevertheless, there may be branches of the university where some such constraints would be both desirable and workable. The Committee clearly did not rule out such a possibility.

Still another possibility would be some other kind of detailed set of rules and regulations applicable throughout the university. This would be undesirable on two counts: first, because no matter how comprehensive such a prescription, it would undoubtedly still not cover all facets of the problem, and second, and more significant, because such a code could not possibly allow for the unavoidable variations in conditions between divisions and subdivisions.

The Committee concluded that what is required is some general guidelines that are broad and flexible enough to lend themselves to appropriate adaptations within individual departments. While some of these guidelines may be universally applicable, others will clearly require adjustment to suit particular situations.

Recommendations

The recommendations that follow are not stated in precisely the same way as in the Committee's report, although they do for the most part amount to the same thing. In some cases, for example the first section, this paper simply expands somewhat on the Committee's statement. In other instances, as in relation to classified or confidential research, this essay deals with issues not treated by the Committee.

I. *The Basic Obligations of a Faculty Member*

The continuing year-round commitment to the varying responsibilities of a faculty member can best be visualized in terms of the six areas of obligation outlined earlier. In elaborating on each of these areas, it must be borne in mind that the appropriate combination expected of different faculty members should vary not only among divisions and among various individuals, but also, in the course of time, with respect to particular individuals. Hence the importance of adaptation of these proposals, by various parts of the university, to their own specific needs as well as to those of their individual faculty members.

(1) *Teaching*

One of the foremost responsibilities of a university professor is the dissemination of knowledge and understanding. In keeping

with this emphasis, every faculty member must carry his share of the classroom, seminar, and laboratory instruction in his department. This may well vary with the level of instruction, that is, whether it be graduate or undergraduate, and with the number of students enrolled in particular courses. In his teaching, a professor should employ up-to-date material, effective techniques of instruction, and discerning means for evaluating his students' progress. Needless to say, a faculty member should be available for virtually all his classes unless ill or otherwise unavoidably detained. Even then, the professor should make every effort to have an adequate substitute take his place.

(2) *Student Access*

In addition, of course, faculty members should make themselves readily available to their students for consultation on an individual basis. In some cases, specified office hours may be the most effective means to this end. In other instances, personal appointments may be the appropriate device. In any event, students should be made to feel that they are welcome to consult their professors as needs arise.

(3) *Scholarly Competence*

Faculty members must also make every effort to keep abreast of the literature and other developments in their fields. Where this is impossible through any other means, sabbatical leaves should be utilized, at least in part, for this purpose. This suggests the need to maintain a healthy balance between the maintenance of an over-all command of one's discipline and one's research.

(4) *Research*

University teachers should also be expected to make original and substantial contributions to the advance of knowledge in their fields, if for no other reason than to improve their own intellectual faculties. Although "publish or perish" should not apply in every instance, adequate research contributions should be emphasized in most cases. In one form or another scholarship obviously entails some sort of research component.

(5) *Thesis Supervision*

Members of the Graduate Faculty must also be expected to supervise their share of Master and Ph.D. students in the preparation of their theses.

(6) *Administrative Responsibilities*

Finally, individual faculty members should be expected to assume a reasonable proportion of the committee responsibilities within

their divisions, within their university, and within the university community in general. From time to time, some professors must also take on part or full-time administrative positions at various levels in the university hierarchy.

Before leaving this resume of faculty obligations to the university, it is essential to reiterate an earlier admonition. The university's expectations of individual professors should vary as much with their respective abilities, energies and aspirations as with anything else. Few faculty members could be expected to meet all of these obligations at any one time, let alone over an extended period. Universities should give more recognition to the principle of specialization than they do, thereby making more effective use of their faculty resources.

II. *Beyond the Faculty Member's Basic Obligations*

As repeatedly emphasized, the individual faculty member's overriding responsibility must be to meet an appropriate combination of the foregoing obligations. This basic responsibility must not be sacrificed to any other purpose. Having said this, however, the Committee took a position in favour of faculty members' being free to engage in other activities, with or without remuneration, provided they do not detract from this fundamental obligation or give rise to any other conflict of interest.

Among these acceptable activities should be the full range of possibilities outlined above. Thus, for example, an individual faculty member should have the opportunity to engage in paid or unpaid outside freelance work as a consultant or advisor. So also he should be eligible for contract or sponsored research supplements channelled through the university, for that part of his time that he is able to devote to research. In addition, where remuneration is provided for clinical work, it should be made available to faculty members undertaking such responsibilities. Finally, given the university's present policy towards extension teaching, faculty members should receive extra remuneration for undertaking such teaching, unless provision is made for a corresponding reduction in their normal teaching load or for equivalent paid leave of absence.

To repeat, however, the first consideration must be the individual faculty member's basic responsibilities as a university teacher and scholar. Only when these are being met should he be free to undertake any additional activities, whether within or beyond the university or on a paid or unpaid basis.

III. *A Code of Ethics on Conflicts of Interest*

Periodically, reference has been made to the need for a code of ethics on conflicts of interest. With this in mind the Committee canvassed other university policies in this area, as well as the draft codes that the CAUT and OCUFA have circulated.

There were two problems with respect to these codes from the Committee's point of view. In the first place they cover a much broader range of ethical issues than are embraced by the Committee's terms of reference. Second, they are not as definitive with regard to the questions of supplementary income and related activities as the Committee felt to be desirable.

In the Committee's view the university should, as soon as practicable, promulgate a specific code of ethics with respect to conflicts of interest growing out of such income and activities. It may well be that such a code should eventually be incorporated into a much broader code of ethics, but that was not the concern of this Committee.

With respect to the more immediate code of ethics on conflicts of interest that the Committee had in mind, it was recognized that conformity to ethical standards is primarily the responsibility of the individual faculty member. The rationale for such an assumption lies in the fact that in the final analysis no code of ethics on conflicts of interest can accomplish its purpose in the absence of an adequate sense of responsibility among those affected.

Recognition of this ultimate dependence, and faith in its implementation, lead the author to express the hope that the university will never find it necessary to require formal approval of extra responsibilities assumed by individual faculty members, except where they are unusually burdensome in time and effort, in which event partial release time without pay should be contemplated.

To assist faculty members, the university's code of ethics in this area should clearly indicate those types of situation that are likely to involve conflicts of interest and that therefore should be discussed with the appropriate university authority in advance. What the Committee deemed a reasonably comprehensive list of such situations follows:

1. A staff member should not undertake activities which encroach on his University responsibilities. If some temporary circumstance makes it advisable for him to undertake activity involving such encroachment, the University officer to whom he is responsible (i.e. dean, department chairman, director, etc.) may authorize full or partial released time without pay. If the

staff member wishes to continue such outside activity indefinitely, he should relinquish his status as a full-time appointee.

2. A staff member should avoid the following conflicts of interest unless, after full consultation, he has the approval of the University officer to whom he is responsible:
   (a) authorize the purchase by the University of equipment, supplies or services from a source in which he or his family has an interest;
   (b) hire a relative as an employee or consultant;
   (c) be associated with the management of a company which hires or proposes to hire university personnel.

3. A staff member should not under any circumstances:
   (a) market for personal gain the results of university-sponsored research, except where a formal agreement has been reached with the University;
   (b) use University facilities or services for outside work without securing appropriate remuneration to the University;
   (c) use unpublished information emanating from any part of the University for personal profit, or assist an outside organization to obtain such information;
   (d) exploit the unpaid work of colleagues or students for personal gain.

It is to be noted that the Committee did not include in this list outside research or consulting, the results of which are to be kept confidential, temporarily if not permanently. Presumably, therefore, the Committee would not bar such work, although it does not explain its reasoning. While the author is in agreement with the present University of Toronto policy of refusing to undertake any such projects under its own auspices, he would not extend the same policy to individual faculty members unless the project is of neither social nor scholarly value. To take any other position would be to prohibit many faculty members from outside involvements that can be of benefit to the community and, indirectly, greatly enhance the members' contributions to both their teaching and their research.

IV. *Administration and Disclosure*

Without adequate administrative and disclosure procedures, the Committee's proposals might have little effect. To assist faculty members in meeting their ethical responsibilities, for which they must remain ultimately accountable, the Committee proposed the procedures described below.

As for the administration of its proposals, the Committee's thinking is based on the assumption that a faculty member's immediate superior (i.e. dean, department chairman or director) and colleagues can be counted on to ensure that he is meeting his basic obligations to the university. Although this may not always have been the case in the past, it is the author's impression that increasing efforts will be made in the future to see that it will be. It obviously represents a dereliction of duty on the part of all concerned to act in any other manner.

To ensure the viability of a code of ethics on conflicts of interest growing out of supplementary income and related activities, the Committee called for a disclosure policy. By this it meant an obligation on the part of individual faculty members to keep their immediate superior informed about their outside activities. This need not entail a detailed accounting of such activities, but rather a general report on the character and extent of one's extra-curricular activities, as these were described earlier in this paper. Clearly, however, where there is an actual or potential conflict of interest involved, consultation with those concerned within the university should take place before any commitments are given by faculty members to any outside interest.

Beyond disclosure to one's immediate superior, the author does not see why interested individuals within the academic community should not have access to information about their colleagues' outside involvements. Since some of these commitments could conceivably influence one's thinking on related issues, the rest of the community should have the right to inform itself of such relationships. If no disclosure of income would be involved, this would not seem to constitute an undue invasion of privacy. Moreover, it might even be deemed desirable in an institution dedicated to freedom of thought, inquiry and expression.

It need hardly be added that, in the Committee's view, failure by a staff member to observe the proposed code of ethics and associated administrative and disclosure requirements should be regarded as serious misconduct.

Conclusion

The Committee's task was a long, arduous, and at times frustrating one. Nevertheless, it did at last produce a unanimous report on a vexing subject that has defied agreement on several previous occasions.

Although its findings will doubtless displease many at opposite ends of the extreme range of views that appears to exist on the issues

in question, the author is confident that the Committee produced a sound report, albeit too cryptic and asssertive.

On balance, the Committee's approach to supplementary income and related activities should do little to inhibit the resulting benefits, while doing much to curb any associated abuses. Even if its proposals are adopted by the University community as a whole, however, they will come to naught unless consciously adopted and endorsed by individual divisions and respected by faculty members.

Serge Losique

OBJECTIFS et DÉFAILLANCES de l'ENSEIGNEMENT SUPÉRIEUR

Le Conseil des universités du Québec a fait circuler un questionnaire sur les Objectifs de l'enseignement supérieur. L'auteur, professeur au Conservatoire d'Art cinématographique, Sir George Williams University, essaie de répondre à la plupart des questions tout en précisant certaines réalités de l'université d'aujourd'hui. Il tient à préciser que ses réflexions portent sur l'université en général et pas seulement sur les universités au Québec et n'ont pour but que de provoquer des études sérieuses quant au rôle et aux objectifs de l'enseignement supérieur.

Rôle de l'université: Objectifs généraux

Le rôle fondamental de l'université demeure toujours le même à savoir l'accroissement et la diffusion des connaissances universelles d'une part, la formation professionnelle des spécialistes dont a besoin la société d'autre part. Toutefois, cette dernière fonction semble être destinée à être assumée par des compagnies puissantes ou autres organismes. Il est urgent d'ailleurs d'examiner en profondeur l'apport possible des deux côtés pour éviter le gaspillage considérable qui se fait au détriment de la société en général.

L'université, la société, l'individu

Cette question est souvent posée sans qu'on puisse définir les « besoins » de la société. C'est un fait que l'université doit être instrument de progrès social, mais sur ce point il faudrait souligner que la promotion individuelle à l'université peut signifier aussi le progrès social. Si l'on prend comme exemple les recherches de Newton et d'Einstein, on verra que dans leurs temps respectifs, la

société ne pouvait pas se rendre compte de la valeur de leurs recherches. Disons qu'ils se sont sacrifiés pour faire avancer les sciences (très souvent en lutte ouverte avec les corps officiels qui représentaient la société) et aujourd'hui c'est la société en général qui profite de l'application de leurs recherches. Il y a des universitaires qui avaient averti l'humanité des dangers que court l'écologie dès le XVIII[e] siècle et c'est seulement aujourd'hui que ce danger devient évident, même pour l'homme simple de la rue. Par conséquent, l'organisation de l'université ne devrait pas perdre de vue la promotion du travail individuel tout simplement parce que la société ne pourra profiter immédiatement de ce travail. Les facultés « rentables » pour la société sont celles qui forment des professionnels: médecins, techniciens de toutes sortes, avocats, etc. Là aussi le travail individuel joue un rôle important. Si la société sent le besoin dans certains domaines spécifiques d'avoir des compétences immédiates, elle peut et a le droit d'exiger de l'université de s'en occuper, aussi longtemps qu'elle sera chargée d'une telle mission. Par conséquent, l'université doit être considérée comme un moteur de développement global de la société et de l'individu, les deux sont interdépendants. L'histoire a prouvé, et surtout l'histoire des États-Unis, que l'évolution de l'humanité ne peut pas être uniquement basée sur le facteur de croissance économique ou des gains immédiats. Dans la vie, et la révolte de notre jeunesse d'aujourd'hui nous le prouve, il n'y a pas uniquement la rentabilité qui compte. L'université doit se soucier de l'utilisation des connaissances qu'elle produit et diffuse, particulièrement dans le cas où cette utilisation conduit à la destruction de l'individu, à celle de la nature et de l'humanité en général. Mais il faudrait voir ici les limites de l'université et ne pas l'accuser de tous les maux de la terre comme le font certains contestataires. Avant on reprochait à l'université de ne pas prendre position sur les problèmes politiques de l'heure et aujourd'hui lorsqu'une partie de son corps professoral est plus que politisée, nous sommes témoins des désordres quotidiens qui s'y produisent. Je doute qu'un grand universitaire de la qualité d'Einstein ait pensé à la destruction d'Hiroshima en formulant ses théories de l'atome. Car l'énergie atomique, comme on le sait, peut rendre d'inestimables services à l'humanité, comme elle peut l'enterrer aussi. La science est comme un autobus sans chauffeur en marche sur une pente et si un bon conducteur y monte, il peut être judicieusement utilisé. Par conséquent, le rôle de l'université n'est pas de détruire l'homme ou la nature. Son rôle est de prolonger et de rendre meilleure la vie de l'homme.

L'université a également le devoir d'éveiller chez ceux qu'elle forme le sens des responsabilités sociales. D'abord, elle devrait veiller à ce que les professeurs soient objectifs, qu'ils analysent les données

scientifiquement et qu'ils ne se livrent pas à des slogans périmés des siècles passés. Il faudrait surtout s'assurer que les professeurs ne vendent pas uniquement leurs propres options politiques ou idéologiques, mais qu'ils laissent ce choix aux étudiants eux-mêmes. S'ils ne font pas cela, eh bien, ces professeurs ont failli à l'éthique professionnelle et ces professeurs-là n'ont rien à faire avec l'université. Dans certaines disciplines les pseudo-professeurs se livrent à des excitations démagogiques devant les réalités quotidiennes et ils oublient qu'ils sont là en face d'un groupe de jeunes pour leur transmettre le savoir objectivement. C'est de l'abus de la mission de l'université qui ne rend service ni aux étudiants ni à la société et qui doit être freiné d'une façon quelconque. Aujourd'hui la terre a plusieurs milliards d'hommes à nourrir, à soigner, à éduquer. Et si les professeurs analysent tout ce qu'il y a de bon et de mauvais dans toutes les sociétés, les étudiants pourraient réfléchir de leur côté aussi et choisir les options qu'ils jugeront les meilleures. En tant que professeur, je peux dire que la société est injuste, qu'il faut l'abattre, qu'il faut détruire nos villes, ces monstres qui grandissent démesurément. C'est commode et c'est facile, d'autant plus que mon salaire est assuré. Mais si demain je voulais détruire la moitié de la ville de Montréal pour sauver l'écologie et sauver l'île de Montréal contre la pollution, je priverais des milliers d'hommes de leur pain quotidien. Aujourd'hui nous sommes pris dans un tel engrenage que de nouvelles priorités naissent de jour en jour et que chaque individu, que chaque génération devra lutter pour améliorer le sort de l'homme. Et cette lutte sera constante, il ne faut pas se faire d'illusions: les régimes ainsi que les hommes parfaits n'existeront jamais. Que l'université soit le bastion de la justice sociale, de la liberté, de la tolérance, de la sagesse surtout, rien de plus normal. Hélas, si l'on continue dans la politisation exagérée de l'université, si certains professeurs ou administrateurs se servent de celle-ci comme d'un tremplin pour d'autres fins, alors l'université ne sera plus une institution digne de ce nom et de ses traditions séculaires. De plus, la société n'aura plus besoin d'une telle université ou du moins de certaines facultés. Enfin, je précise que l'université ne devrait pas être esclave du système social.

L'université et l'État

L'État doit intervenir dans l'éducation supérieure d'une façon quelconque, c'est entendu. Mais pour éviter que l'université ne devienne un instrument aux mains des partis politiques au pouvoir, l'État pourrait contrôler l'utilisation des subventions par un organisme para-gouvernemental, à savoir, un organisme autonome, représenté par des membres de l'enseignement supérieur, du gouvernement et par des membres à l'extérieur du gouvernement

et de l'enseignement supérieur. Ce serait un sorte d'Assemblée des universités. Il serait, à mon avis, néfaste que l'université se centralise excessivement, comme ce fut le cas des universités françaises jusqu'à la révolte de 1968. A ce moment-là l'université serait morte. Cette centralisation ne serait pas à craindre sous l'autorité de gens éclairés et universitaires, mais l'histoire nous a appris que les peuples ont été obligés de servir le plus souvent sous de mauvais rois. Chez nous, le danger est d'autant plus grand que nous n'avons pas de tradition universitaire à proprement parler. Si l'on examine l'évolution des rapports entre l'État et l'université ces dernières années, on a l'impression que les fonctionnaires de l'État décideront bientôt du nombre de cours enseignés, de la matière, sans qu'aucune voix autorisée de la part des professeurs s'élève contre ces tendances. C'est inquiétant pour l'évolution de l'université et on se demande sérieusement ce qui restera de sa charte, garantie par l'État. Je suis pour la collaboration étroite avec l'État afin de contrôler les deniers publics et de promouvoir le bien général de la collectivité, mais l'université doit rester libre de toute ingérence démesurée de l'État dans ses affaires académiques. Cette autonomie de l'université doit être assurée par les professeurs eux-mêmes. Elle comporte des risques aussi: les professeurs ne peuvent pas exiger des salaires toujours plus élevés de l'État (via les subventions accordées à l'université) tout en réclamant l'autonomie totale de l'université. Ils ne peuvent pas non plus faire intervenir l'État pour leur assurer la sécurité de l'emploi si l'université est autonome. Ces contradictions internes de l'université doivent être résolues par les professeurs avant d'élaborer la nature exacte des rapports entre l'État et l'université.

Objectifs spécifiques quant à l'enseignement et la recherche

Qualité

Au risque de choquer plusieurs, je pense que cette exigence est insuffisamment respectée dans les établissements universitaires à cause, d'ailleurs, de toutes sortes de facteurs internes. Pourtant, il est facile de définir un niveau minimum de qualité selon la discipline ou le champ d'étude. Il est aussi facile de la faire respecter. Mais jusqu'à présent, nos chefs académiques, les vice-recteurs académiques, les doyens et leurs assistants sont de plus en plus éloignés des problèmes directs de recherche ou d'enseignement parce que nombre d'entre eux, sinon tous, ne font plus de recherches ni d'enseignement depuis de nombreuses années et sont pratiquement noyés dans des choses purement administratives. C'est un drame, il me semble, que la plupart des universités vivent aujourd'hui à travers le Canada. Nos autorités académiques sont occupées à se

battre avec les étudiants, à se battre avec les syndicats des professeurs, à entendre les plaintes de tous et de chacun, à jouer au chat et à la souris dans la jungle des comités où la conception de l'esprit Borgia tel que décrit par Machiavel triomphe plus souvent qu'à son tour. Aujourd'hui, sous prétexte de la démocratie, on ne sait jamais en arrivant le matin à l'université quel comité travaille contre un autre ou quel département sera la victime d'une « décision ». La « priorité » d'une faculté est très souvent priorité d'un clan. De plus, trop de choses sont arrangées d'avance (nominations aux postes importants par exemple) et les comités ne servent qu'à couvrir le « processus démocratique » de l'administration. Pour parodier Hamlet, on pourrait dire qu'il y a quelque chose de très pourri dans l'État de l'homo sapiens. Les vrais professeurs impuissants en désespèrent. Oui, le climat de paix et de sérénité, essentiel pour la recherche et l'enseignement, manque cruellement à l'université. Ce malaise est d'autant plus grave que la majorité des professeurs sérieux se désintéressent des travaux de leur association de professeurs qui est loin d'être le premier gardien de l'éthique de la profession. Nos associations de professeurs luttent surtout pour obtenir de meilleurs salaires et je n'ai jamais vu une association lutter pour la qualité académique de son université. A mon avis, ces associations devraient être, à travers le pays, aux mains de vrais professeurs d'université et non pas aux mains de petits politiciens et de pseudo-professeurs.

Ne paye-t-on pas finalement un prix trop élevé pour le gigantisme de nos institutions ? Une réforme urgente s'impose ici: affaires administratives aux administrateurs et affaires académiques aux compétences académiques. Pour faire respecter et surtout pour améliorer la qualité de l'enseignement supérieur, il faudrait s'assurer que les universités réévaluent effectivement, à intervalles réguliers, avec des experts neutres et compétents de l'extérieur de l'université, la valeur académique de tous leurs départements. Puisqu'on fait actuellement du recyclage un peu partout dans le monde du travail, il est impérieux que l'université fasse au plus tôt le recyclage de ses propres professeurs.

Diversité des programmes

Il faut que l'État et les universités mettent tout en œuvre pour que soit offerte la gamme la plus complète des services universitaires et particulièrement des programmes d'enseignement. Dans le cas de services ou programmes très coûteux, il est souhaitable que les universités québécoises puissent faire appel aux ressources des réseaux externes. Cela s'applique surtout aux études avancées (3e cycle). De plus, il est entendu qu'il faudrait un plan d'ensemble pour les universités du Québec en ce qui concerne la division

des ressources financières. Mais, là on ne voit pas le problème, c'est qu'on lie toujours le deuxième cycle au troisième, au lieu de lier le deuxième cycle au premier. A mon avis, toutes les universités et tous les départements qui n'ont pas de maîtrise devraient l'introduire immédiatement. Ainsi, on introduit les étudiants aux recherches et, en même temps, on oblige les professeurs à faire de la recherche. Au niveau de la licence ou du premier cycle, il est pratiquement impossible de faire de la recherche. La maîtrise aiderait aussi les professeurs à maintenir constamment la qualité de leur enseignement. Après tout, la maîtrise n'est qu'une année supplémentaire au premier cycle; elle est, je dirai même, l'aboutissement normal pour un étudiant qui prend une licence avec spécialisation (B.A. Honours). Je suis, par contre, d'accord qu'on n'autorise pas toutes les facultés, ni tous les départements à introduire des programmes de doctorat, extrêmement coûteux. Le doctorat en soi est un programme à part et il s'allonge sur une période de plusieurs années. Par conséquent, les ressources devraient être planifiées pour éviter le dédoublement. Peut-être y aura-t-il un avantage à grouper les études doctorales et postdoctorales en réseaux d'établissements pour tout le Québec: un réseau francophone, un réseau anglophone ou peut-être un seul réseau pour l'ensemble du Québec.

Éducation continue

L'avenir de l'éducation continue est grand et je pense que toutes les universités doivent offrir des services d'éducation continue avec des crédits appropriés. Je pense également qu'on devrait étendre la responsabilité des universités en matière d'éducation continue à tous les cycles de l'enseignement supérieur. Dans certains cas, on devrait concevoir dans le programme des régimes pédagogiques, des structures d'encadrement et des horaires spécifiques ou du moins largement indépendants des programmes, régimes et structures et horaires offerts aux étudiants réguliers. Je ne pense pas, pour le moment, qu'il existe un autre cadre mieux adapté que l'université pour s'occuper de l'éducation continue. C'est un fait qu'une association professionnelle ou une entreprise pourrait offrir des cours d'éducation continue. Mais ce serait dans des domaines tout à fait spécialisés. Par contre, l'université est mieux placée ou mieux adaptée pour offrir toute une gamme de cours d'éducation continue que, disons, l'entreprise privée ou l'association professionnelle. De toutes façons, l'université pourrait collaborer avec l'entreprise. Les objectifs sociaux peuvent être formulés par l'État en collaboration avec l'université. Déjà l'université elle-même, dans son programme régulier, est appelée à répondre à des objectifs sociaux. Par conséquent, la responsabilité financière de l'éducation continue devrait être partagée entre l'individu, l'employeur et

l'État, exactement au même titre que le financement des étudiants réguliers. Dans l'ensemble, l'éducation continue est une exigence sociale de premier ordre. Grâce à elle, l'université serait pratiquement accessible à tout le monde. Grâce à elle les gens d'un certain âge pourront mettre à jour leurs études faites 20 ou 30 ans auparavant et ne souffriront pas dans leur travail (recyclage, compétence . . .).

Grâce à elle aussi, les jeunes étudiants pourront travailler une année, étudier une autre et ainsi se familiariser au plus tôt avec les vrais problèmes de la société qui les entoure (« De la théorie à la pratique, de la pratique à la théorie . . . » Mao dixit). C'est l'évidence même que dans les structures actuelles de l'université, ils ont du temps à perdre avec tous ces sit-in et autres manifestations du genre. Bref, peu importe le travail qu'on fait, on pourra étudier toute sa vie, ce qui est essentiel vu les révolutions constantes des connaissances acquises. L'éducation continue allégera sans doute le fardeau fiscal de la société. Il est même possible qu'un jour l'éducation continue transforme radicalement l'université: celle-ci formant des hommes avec des connaissances générales et l'entreprise des spécialistes nécessaires.

Pédagogie universitaire

C'est une question délicate qui doit être repensée régulièrement pour répondre surtout à la sensibilité de chaque nouvelle génération. Mais il est néfaste aussi de chambarder sans cesse toutes les structures d'enseignement sous prétexte d'une nouvelle pédagogie. Ce qui se passe actuellement, c'est qu'on introduit une réforme après l'autre sans donner une chance à aucune d'elles de se vérifier en pratique. A mon avis, il n'y a pas de méthode miracle. Il y a des méthodes qu'on peut améliorer graduellement. D'autre part, la pédagogie est liée aux matières qu'on enseigne. La pédagogie traditionnelle n'est pas toujours mauvaise, mais il me semble qu'on devrait repenser certaines matières qu'on enseigne. Par contre, même si l'on formulait une pédagogie proprement universitaire, tout dépendrait de la matière qu'on enseigne et du professeur qui enseigne telle ou telle matière. La pédagogie dépend aussi du nombre d'étudiants présents en classe. Voilà pourquoi je pense qu'il serait dangereux de formuler des règles de pédagogie car la pédagogie est quelque chose que chaque individu porte en lui-même et qu'on devrait laisser à l'initiative du professeur et surtout du Département pour lequel ce professeur travaille. L'apport et la collaboration des étudiants peuvent être des plus utiles sur ce point. Ce qu'il faudrait peut-être exiger davantage des professeurs, c'est qu'ils soient vraiment capables de transmettre la matière qu'ils enseignent, qu'ils soient capables d'enthousiasmer ou du

moins de réveiller l'étudiant pour la matière qu'il a choisie. Après tout, ce qui compte pour les étudiants c'est que les professeurs leur transmettent un certain enthousiasme des connaissances qu'ils ont enseignées au lieu de cours ennuyeux à mourir.

Décloisonnement des programmes

Il est entendu que les départements traditionnels sont obligés de plus en plus d'ouvrir leurs horizons. Jadis, peut-être que c'était bien d'enseigner les techniques littéraires, la versification, les sentiments, les idées en général, etc., mais aujourd'hui, quand on étudie la société sous tous les angles possibles, il n'y a pas de doute que le facteur sociologique est extrêmement important dans n'importe quelle œuvre littéraire. Voilà pourquoi, par exemple, la littérature et la sociologie sont obligées de collaborer. La même chose s'applique à la psychologie et à d'autres sciences. Ce ne sont que deux exemples parmi plusieurs autres. Donc, il est normal qu'il y ait de plus en plus des programmes inter-disciplinaires. Mais, également, il serait dangereux, surtout dans notre contexte où les maîtres à penser sont encore rares, de chambarder du jour au lendemain les structures traditionnelles. Il me semble que la meilleure façon de réconcilier le passé et l'avenir est d'être prudent et d'améliorer constamment le système traditionnel car nous pouvons mettre sur le papier n'importe quelle réforme et avoir des réformes tous les ans, tous les deux ans, mais il faudrait d'abord voir les conséquences de tout cela. Nous avons connu trop de réformes ces dernières années au Québec qui n'ont pas donné les résultats escomptés. Nous avons déjà une nouvelle expérience en cours au Québec, c'est l'Université du Québec où les méthodes par modules sont introduites et il faudrait d'abord voir, dans quelques années, les résultats de l'expérience de l'Université du Québec dans ce domaine. Si le système s'avère bon, il n'y aura pas de raison pour ne pas l'étendre davantage. Pour le moment rien ne prouve que les modules aient réussi, soit au point de vue académique, soit au point de vue social ou qu'ils soient adéquats pour toutes les sphères de l'activité universitaire.

Objectifs spécifiques quant aux établissements universitaires

Universités isolées ou réseau d'établissements

Il est évident que dans toutes ces questions on joue beaucoup sur les mots, ce qui accommode peut-être les technocrates, car en pratique je ne vois pas beaucoup de relation entre, disons, le réseau de Chicoutimi et le réseau de l'Université du Québec à Montréal. Je vois aussi mal les étudiants de Rimouski aller travailler sur le

campus de Trois-Rivières. Qu'on appelle ça l'Université du Québec pour toutes les universités, et que chacune ait ses spécialités propres, je le veux bien, mais sur le plan financier, sur le plan de l'efficacité même, pédagogique et administratif, je ne vois pas ce qu'on gagnerait en transformant toutes les universités en une seule. Qu'il y ait un organisme en haut, par lequel toutes les universités passeront, c'est tout à fait normal. D'ailleurs nous avons le Conseil des universités du Québec qui, une fois réorganisé avec un vrai statut autonome, pourrait parfaitement bien remplir cette tâche. Mais là où la collaboration s'impose, et c'est tout à fait logique, c'est au niveau doctoral où les recherches très poussées exigent d'énormes ressources.

Sur ce point, les universités devraient collaborer, quitte à créer un organisme spécial à ces fins-là. Cela veut dire que les doctorats devraient être centralisés ou du moins contrôlés, afin qu'il n'y ait pas de dédoublement exagéré, que des bibliothèques centrales de recherche pour toutes les universités devraient être créées. Tout le reste, le premier cycle d'enseignement, le deuxième cycle d'enseignement et les bibliothèques adéquates pour ces deux cycles, devrait être décentralisé et laissé à la discrétion des universités. En partant de ce principe, nous devrions alors songer surtout à la décentralisation des universités et aucunement à la centralisation.

Concentration des ressources et spécialisation des établissements

Je suis partisan qu'on définisse pour chaque établissement les domaines d'enseignement et de recherche qu'il devra développer en priorité. Mais il y a malheureusement des matières où le dédoublement est une nécessité: français, anglais, géographie, histoire . . . etc. Dans ce plan, il faudrait tenir compte de l'existence de chaque institution déjà sur place. Il ne faudrait pas traiter certaines institutions comme plus aptes à offrir tel ou tel enseignement et traiter les autres en parent pauvre. Si les tâches sont divisées équitablement, il me semble qu'il y a de la place pour plusieurs universités au Québec. Mais là non plus, il ne faut pas être rigide car l'éducation est une chose difficile en soi, et il serait dangereux de l'enfermer dans des chiffres comme on fait avec la production automobile.

Les critères d'une spécialisation institutionnelle sont plus ou moins là. Si l'on pense que le campus de Rimouski pourrait améliorer les conditions de vie des Gaspésiens en créant des recherches en pêcherie ou en industrie forestière, il me semble que ce pourrait être la vocation de cette université-là. Un autre exemple: Sir George ayant toujours été au centre de la ville, il me semble que cette université pourrait se spécialiser en communications de toutes

sortes et cela en français aussi, s'il le faut. Ce sont des tâches générales qu'on devrait assigner à certaines universités, mais il ne faudrait jamais priver ces universités de développer l'enseignement général et cela dans tous les domaines possibles. La concurrence saine au niveau du premier et du deuxième cycle serait même une nécessité.

Implantation de nouvelles institutions

Il est entendu que l'État par le biais d'un organisme para-gouvernemental devrait contrôler l'établissement de nouvelles institutions. La création de nouvelles universités (au sens propre et figuré du mot) est une nécessité car il faut admettre que les universités existantes sont surpeuplées et sont devenues de véritables usines qui ne fabriquent plus d'hommes éduqués (peut-être instruits) mais de véritables robots d'où le malaise social croissant. L'étudiant de nos jours à l'université est un simple numéro anonyme sans importance d'où son désarroi devant la société, la vie, d'où ses nombreuses contestations violentes, etc. Rien de plus normal alors qu'une minorité active trouve un terrain propice à ses propres fins. S'il y avait une autre motivation pour l'étudiant, l'épanouissement de sa personne humaine par exemple, il serait le premier à défendre son université au lieu de sombrer dans l'apathie. Il faut éviter que les ponts ne soient complètement rompus entre le public et l'université: ces ponts sont chancelants et le grand public en a par-dessus la tête des étudiants et de l'université. Sur ce point, il faut absolument décentraliser les universités et avoir de petites unités ou du moins accorder une autonomie (financière et académique) plus grande aux facultés.

Les universités existantes devraient prendre part aux études préparatoires à la création d'une nouvelle université. Elles devraient même participer à sa mise sur pied et à son démarrage en prêtant des experts pour établir des plans, en formant de nouveaux professeurs, etc ... Et les critères de localisation de nouveaux établissements devraient s'établir d'après le chiffre de la population desservie. Déjà des villes comme Saint-Jérôme, Rouyn-Noranda, etc ... pourraient avoir des universités. Ainsi il coûterait moins cher aux classes moyennes et aux ouvriers des régions éloignées d'envoyer leurs fils à l'université. Cela permettrait également à un nombre incalculable de gens de recevoir une instruction universitaire dans des programmes d'éducation continue. Les connaissances doivent être transportées partout où il y a un moyen de les transporter. La mission universitaire ne doit pas s'arrêter à cause des problèmes aigus que l'université rencontre dans son évolution à un moment de l'histoire où toutes les valeurs traditionnelles sont balayées par les images brutales de la vitesse. La philosophie d'enseignement doit changer avec le temps, mais

l'acquisition des connaissances de plus en plus poussées restera toujours une nécessité pour l'homme.

Mobilité des ressources au sein du réseau universitaire

Il n'y a pas de doute qu'une certaine mobilité devrait être observée, mais par contre, cela présente des dangers pour l'enseignement supérieur. Pour les professeurs déjà bien établis avec derrière eux beaucoup de recherches il n'y a pas de risque qu'ils aillent d'une université à l'autre. Mais pour les jeunes c'est un risque énorme, car ils peuvent se transformer en touristes éternels et n'être plus responsables devant aucune institution. D'ailleurs, on n'a qu'à observer dans certaines institutions le cas des professeurs dont les devoirs sont partagés entre deux départements. Ces professeurs se trouvent comme déracinés et ne savent plus s'ils devraient favoriser l'évolution de l'un ou de l'autre département d'où une sorte de laisser-faire chez ces professeurs. Mais qu'il y ait une collaboration entre plusieurs universités, surtout au niveau doctoral, cela me paraît tout à fait normal de même que pour les équipes se recherche.

Il est vrai que pour certains universitaires la mobilité est une bonne chose, mais je doute que ce soit un facteur d'épanouissement intellectuel pour un jeune professeur qui commence. Ce qui manque peut-être à ces professeurs, ce sont les conditions de travail dans leurs propres institutions. Ils pensent qu'ils seraient mieux en changeant d'institution. Si on doit offrir la mobilité aux professeurs, c'est sous forme de congés sabbatiques; par exemple, un professeur de l'Université Laval, qui prendrait son congé sabbatique d'une année irait enseigner à l'Université de Montréal ou à McGill etc... Je le répète, le travail sérieux est un travail de longue haleine et comme on dit: pierre qui roule n'amasse pas mousse. Je dis aussi en toute honnêteté, et après une longue expérience dans l'enseignement, que certains professeurs ont besoin de plus de discipline qu'on ne le pense généralement, surtout de nos jours où la facilité et le brio dans les journaux ou à la TV sont à la mode. En ce qui concerne les étudiants, la mobilité ne présente que des avantages.

Réseau universitaire québécois et réseaux externes

Il me semble que cela non seulement est souhaitable, mais que c'est une nécessité pour les universités du Québec qui doivent rechercher complémentarité et collaboration avec des établissements situés en d'autres provinces et d'autres pays, car après tout l'université embrasse la science universelle et pour être en contact avec cette science universelle, les universités du Québec doivent collaborer avec d'autres pays.

Les programmes québécois et les programmes fédéraux de développement de la recherche pourraient être négociés directement par chaque université ou, pour éviter les chicanes stériles sur la constitution, par un organisme que j'ai déjà proposé comme une sorte d'Assemblée des universités du Québec. Mais il faut souligner qu'on ne devrait pas négliger les programmes fédéraux de recherche ainsi que toute aide et collaboration extérieures.

Si l'État québécois décide de coordonner tous les programmes de coopération avec l'extérieur de toutes les universités, il pourrait le faire. Mais il me semble qu'il devrait encourager les universités à avoir des programmes de coopération directe. Trop de rouages bureaucratiques ne peuvent que nuire à l'épanouissement de l'université. Toutefois, dans des domaines hautement spécialisés, où le problème de financement se pose, l'État, par son organisme de contrôle, pourrait dire son mot. Ici, tout dépendra de la façon dont l'État du Québec élaborera sa politique propre et stable en matière universitaire au lieu d'improviser d'une année à l'autre suivant les rhumes de petits politiciens.

Retrait des universités du champ de l'enseignement pré-universitaire

Si l'État a créé le niveau collégial (CEGEP), l'État a le devoir d'améliorer ce système collégial en lui donnant des structures propres et en le séparant de l'université complètement tout en maintenant une bonne coordination des programmes entre les deux niveaux. Voilà pourquoi je pense que l'université ne devrait plus dispenser l'enseignement au niveau collégial.

Ouverture sur le milieu

On parle souvent de l'université et de son milieu. Disons qu'on a fabriqué un mythe dont on se sert à toutes les sauces politiques, car malgré toutes les critiques, l'université est ouverte sur le milieu. Je dirai même trop, car si la tendance continue, un jour on donnera des cours soi-disant universitaires sur les marques de savon ! Tenez, c'est sérieux, un professeur de sociologie trimbala ses étudiants pendant un semestre dans les boîtes de nuit à Montréal tous les vendredis soir pour étudier le problème des prostituées. Sa conclusion: « Montréal manque de prostituées ». Vous voyez, l'université pense même aux marins débarquant dans le port de Montréal ! Pendant ce temps-là de grandes civilisations sont méconnues (japonaise, chinoise, hindoue . . .).

Qu'il y ait des représentants des corps sociaux et professionnels dans les conseils d'université, c'est bien et c'est souhaitable. Par contre, l'État n'est pas en mesure de jouer seul pour le compte

des universités le rôle d'analyste des besoins du milieu. Très souvent, le gouvernement s'ouvre les yeux devant un drame quand il éclate. L'État pourrait peut-être servir d'intermédiaire de plusieurs corps sociaux et il pourrait transmettre ces besoins du milieu aux universités. Si par exemple il y a un cri d'alarme pour que l'université produise des dentistes, des médecins, des vétérinaires, des chimistes, l'université pourrait en tenir compte, comme elle le fait dans l'élaboration de ses programmes actuels. Je l'ai déjà dit, l'intérêt de la communauté n'est pas toujours clair. Je doute que la communauté puisse voir son intérêt immédiat dans l'exploration spatiale ou dans l'étude approfondie de la Chine d'aujourd'hui. Pourtant, à long terme, l'exploration spatiale c'est peut-être l'avenir de l'humanité. Pour le moment cette exploration se fait aux dépens de la communauté. Pour parler franc, l'intérêt véritable de la communauté pourrait se résumer à travers les siècles de la même façon: être décemment nourrie, logée, soignée, grâce à son travail et avoir une liberté relative. C'est cet intérêt-là qu'on devrait assurer à toutes les générations. Tous les autres intérêts sont très souvent secondaires et ne dépendent que de ceux qui les vendent à la communauté.

Les exigences matérielles d'un enseignement de haut niveau

Je pense que jusqu'à présent la société et l'État ont fourni des ressources suffisantes aux universités, surtout depuis la « révolution tranquille », et les conditions indispensables à l'accomplissement de leurs tâches. Malheureusement, il y a eu trop de gaspillage de la part des universités. Prenons un exemple: les congés sabbatiques. Une enquête serrée démontrerait qu'il y a un véritable gaspillage injustifiable des deniers publics. Pour n'importe quel projet chimérique, on accorde des congés sabbatiques avec le plein salaire. Mais qui va oser demander des comptes sérieux de son travail à un professeur à son retour ? C'est une atteinte directe à sa liberté académique ! D'autre part, il faut dire que personne n'empêche un professeur d'atteindre le « haut niveau » dans son domaine. Nos années académiques ne durent pas plus de sept mois et un professeur a tout le temps pour parfaire son champ d'étude.

Parité entre secteurs linguistiques

Je sais que ce problème linguistique est épineux, mais au niveau universitaire ce problème ne devrait pas être insoluble, car le français et l'anglais sont deux langues officielles du pays. Les deux ont rendu de grands services à la civilisation de l'homme et elles restent encore les deux grandes langues du monde occidental, sinon du monde tout court. On pourrait être tenté d'établir cette parité d'après les populations globales respectives du Québec.

Mais il faudrait songer aux avantages de l'une ou de l'autre langue dans certains domaines spécifiques. Il ne faut pas se faire d'illusions, l'anglais domine et dominera de plus en plus le monde scientifique pendant longtemps. Aucun esprit rationnel ne peut priver notre jeunesse et notre monde ouvrier de ce véhicule de communication. En URSS, au Japon, en Italie, en Allemagne de l'Ouest et dans beaucoup de pays du monde, des revues scientifiques pullulent en anglais et pourtant on ne pourrait accuser les Italiens ou les Russes d'être anti-nationalistes. C'est pour cette raison que l'anglais dépasse la question de la minorité anglophone du Québec et cette langue devrait être traitée par rapport à son importance mondiale sans parler de nos problèmes immédiats face au continent nord-américain. D'autre part, la proportion de la population universitaire est un mythe, vrai peut-être il y a dix ans: le nombre des francophones dépasse de loin la population universitaire des universités anglophones. Il me semble qu'il serait équitable de donner aux universités les subventions d'après le nombre d'étudiants inscrits (y compris la division du soir) puisque de toutes façons, la population universitaire sera proportionnelle d'ici quelques années à la population linguistique du Québec. Ceci dit, les universités de langue anglaise pourraient et devraient enseigner certaines matières en français, du moins celles qui touchent le Québec (certains cours d'économie, d'éducation, de sociologie, d'histoire, de géologie, de religion, de géographie, de droit, etc...). C'est le simple bon sens, même scientifique, qui milite en faveur de cette politique en plus des immenses avantages de compréhension entre les deux groupes ethniques.

Il est possible de concevoir un dédoublement complet du réseau universitaire du Québec selon la langue, mais cela uniquement au niveau doctoral et des recherches comme je l'avais déjà souligné. Il ne faudrait pas oublier que dans les grandes universités d'aujourd'hui, il y a surpopulation générale. Il est urgent de créer des unités plus petites si nous voulons éduquer nos étudiants convenablement, car ce qu'on ne voit pas, c'est que nos administrations, nos professeurs et tous les gens de bonne volonté perdent leur temps à mater une manifestation après l'autre, et que même les forces intérieures ne suffisent plus et qu'on a recours de plus en plus à la police. C'est navrant quand on pense à ce que l'université devrait être, à savoir un endroit de liberté et de tolérance pour toutes les idées de l'homme. Je suis persuadé que si on crée une atmosphère propre à la discussion, à l'enseignement, à la recherche, on pourrait éliminer beaucoup de tension et ce sera l'investissement à long terme le plus profitable que la société pourrait s'offrir. Si les technocrates pensent tout en termes de profits immédiats, ils se trompent et l'université sera transformée en une épouvantable caserne ou une sorte de jardin d'enfants

que la police doit régulièrement rappeler à l'ordre public. Nous devons nous rappeler que notre société est toujours au bord de la violence physique et son élément le plus dynamique, sa jeunesse universitaire, exprime le plus cette violence amplifiée par les mass media. Nous devons, donc, chercher à humaniser l'université.

Objectifs spécifiques quant aux étudiants

Accessibilité

Il faudrait permettre l'accès à l'université à tous ceux qui en ont le désir et les capacités intellectuelles. Ce ne devrait pas être un privilège pour aucun groupe social, mais un droit pour tout citoyen qu'il soit riche ou pauvre. Il est vrai que le taux de scolarisation est trop élevé en certains domaines et il faudrait, par conséquent, pousser les jeunes à découvrir d'autres horizons. Les étudiants doivent assumer une partie du coût de leur formation universitaire. D'abord, ils respecteront davantage l'université parce qu'il s'agit de leur propre investissement, ensuite, il est normal qu'ils payent une partie de leur propre instruction car ils seront les premiers à en profiter. L'État peut assumer le coût d'une façon plus économique et plus profitable pour tout le monde, à savoir, assurer aux étudiants un travail sûr pendant la période des vacances.

L'université a un devoir à l'égard des personnes défavorisées et doit recommander à l'État de subventionner ces étudiants. Pour aider ces personnes à rattraper le temps perdu, l'État pourrait mettre à la disposition des universités des subventions spéciales pour ceux qui se montreront aptes à suivre l'enseignement universitaire.

Orientation

Je crois que l'on exagère sur l'orientation des étudiants. Ce qui pourrait être fait, c'est que les programmes universitaires soient plus connus au niveau secondaire, car il ne faut pas se faire d'illusions, dans la majorité des cas, les étudiants arrivent à l'université avec leur choix déjà fait. Le rôle de l'université est de leur expliquer les avantages et les inconvénients de l'option choisie. Il ne faudrait pas non plus permettre aux étudiants, dans leur propre intérêt, l'entière liberté dans le choix des cours et des programmes.

Il me semble qu'on exagère également avec la question des diplômés et du marché du travail. On pourrait publier des statistiques sur les possibilités des débouchés. Mais très souvent un étudiant peut prendre une maîtrise en français en vue d'approfondir sa matière et aller travailler peut-être plus tard dans une agence de voyages

ou dans une compagnie d'assurance sans jamais penser à l'enseignement. Nous sommes gouvernés par des avocats aussi bien à Québec qu'à Ottawa et ces gens-là ne pratiquent pas leur barreau. Est-ce que le planificateur de l'État pourrait à ce moment-là décider des besoins de spécialistes en français en fonction uniquement de l'enseignement ? Après tout, l'État a le devoir d'informer les gens sur les possibilités du marché du travail en publiant des statistiques comme il l'a déjà fait. Comment se fait-il qu'on a tant crié que l'université n'a pas répondu aux besoins de la collectivité et tout d'un coup ses diplômés et dans tous les domaines, n'arrivent pas à se trouver du travail ? D'ailleurs on publie tous les jours toutes sortes de statistiques sur le marché du travail et dans tous les domaines possibles. Là encore, l'éducation universitaire n'a rien à faire avec cela. On peut être parfaitement diplômé en quelque chose et aller ensuite labourer la terre. C'est ce mythe mercantile aristocratico-bourgeois qu'il faut désamorcer, à savoir que les diplômés universitaires doivent obtenir automatiquement un travail bien rémunérateur. Est-ce que cela nuirait à l'agriculture du Québec si tous nos paysans étaient de bons agronomes ?

Un statut de l'étudiant

Toutes ces questions concernant la participation des étudiants demandent beaucoup de réflexion. Trop souvent, dans le passé, les étudiants ont été manipulés par des professeurs, par des politiciens de toutes sortes, par leurs propres camarades pour des fins qui n'ont rien d'universitaires. Voilà pourquoi il y a une apathie générale de la part des étudiants, sinon une méfiance totale en ce qui concerne leur propre participation à la vie académique de l'université. Les vrais professeurs et les vrais étudiants ne demandent qu'à discuter, qu'à dialoguer, et le jour où on transformera l'université en une véritable université (communauté des professeurs et des étudiants), ce sera la participation directe des étudiants aux destinées de l'enseignement supérieur. C'est la méfiance qui doit disparaître de part et d'autre. Si des deux côtés on a comme premier objectif la qualité académique de l'institution, sans utiliser celle-ci pour d'autres desseins, alors le dialogue honnête et civilisé sera possible et les responsabilités et les devoirs de chaque groupe bien définis. Tout le reste n'est que mythes et slogans pour nourrir une publicité démagogique ou une fausse démocratie.

Étudiants étrangers

Comme dans tous les pays normaux du monde, nous ne devrions jamais décourager la venue d'étudiants étrangers pour faire des doctorats ou de la recherche chez nous. Si ces étudiants remplissent les conditions d'admission et s'ils pensent qu'ils peuvent faire

un doctorat chez nous, nous devrions les accueillir moyennant nos possibilités. C'est un enrichissement en même temps pour nous. Et il serait également souhaitable d'encourager nos étudiants, surtout dans certaines disciplines, à faire des doctorats dans d'autres pays du monde. Il me semble que c'est là assurer la meilleure compréhension entre les peuples du monde. Pour le 1er et le 2^{e} cycle, il est essentiel qu'un étudiant à cet âge crucial de son développement soit formé dans son pays où il compte vivre plus tard. Ainsi tout en étudiant, il comprendra par le contact quotidien son milieu et ses problèmes.

Objectifs spécifiques quant aux professeurs

J'avoue qu'il y a un déséquilibre actuel dans les fonctions du corps enseignant. Un professeur de nos jours est un homme à tout faire: politicien, commentateur, membre de toutes sortes de commissions, etc ... A l'université, et s'il s'y trouve, il passe son temps dans des comités innombrables et dans d'autres tâches administratives et para-universitaires. Tout cela éloigne le professeur de l'enseignement universitaire à proprement parler et de l'étudiant, et là un ordre s'impose et de façon urgente. Si un professeur a envie de faire de la politique active ou de se consacrer à une autre activité hors de l'université, il n'a qu'à démissionner et céder sa place à un autre. Ce n'est pas la recherche qui tue les professeurs. Elle ne doit pas être séparée de l'enseignement car l'une est complémentaire de l'autre.

Qualité du corps enseignant

Comme dans n'importe quel autre domaine la qualité est toujours souhaitable. Elle est surtout plus demandée dans le monde universitaire qui en manque souvent, hélas. Dans les structures actuelles de l'université, cette qualité ne peut pas être assurée, peut-être à cause des pressions extérieures et intérieures exercées sur les professeurs et peut-être surtout à cause de l'impuissance des chefs de département (ou des départements tout court) à faire quoi que ce soit contre un professeur qui néglige son enseignement. Même si un chef de département ose lever la voix, preuves en mains, à cause de toutes sortes d'intrigues et de comités, c'est lui finalement le grand responsable et le grand humilié devant tout le monde. Et on se demande ensuite ce qui ne marche pas à l'université ...

Je suis d'accord que le programme académique soit examiné, et il l'est, mais, malheureusement, ce sont des comités souvent incompétents qui jugent de la valeur d'un programme. L'introduction d'un nouveau programme dépend donc de la force des intrigues. Il faudrait que les universités fassent un pré-examen académique de la qualité de leurs enseignants par des comités d'experts exté-

rieurs, peut-être de la province, tous les cinq ans. Ce principe devrait s'appliquer aussi aux administrateurs académiques, en particulier aux doyens et à leurs assistants ainsi qu'aux vice-recteurs académiques et leurs assistants, donc à ceux qui ont le vrai pouvoir dans la marche académique de l'université. Ce qui aiderait aussi, c'est l'abolition de la permanence accordée aux professeurs. Cette abolition améliorerait énormément l'enseignement supérieur, stimulerait davantage certains professeurs au travail sérieux et amènerait plus de discipline intellectuelle. C'est derrière la permanence (tenure) que se cachent tant d'incompétences, tant d'intouchables, ce qui fait que l'enseignement supérieur souffre dans son ensemble et les premiers qui en souffrent, ce sont les étudiants. C'est là que se trouve l'une des causes principales des problèmes de l'université.

Conditions de travail du personnel enseignant

Ces conditions doivent être déterminées par négociation dans le cadre de chaque établissement. Cette liberté est nécessaire à chaque université, car la concurrence saine est souhaitable entre les professeurs. L'État pourrait, par son organisme de contrôle, s'assurer qu'un minimum en salaire soit respecté et qu'il n'y ait pas d'universités riches et pauvres au Québec.

A l'intérieur de ce minimum et de ce maximum l'université devrait être libre de décider du salaire d'après les mérites de chaque professeur. Mais il faudrait que ces mérites soient respectés par des administrations universitaires. Pour le moment les critères de ces mérites sont souvent arbitraires, ce qui est déplorable, car le professeur compétent est au service des étudiants et de sa branche scientifique et ne devrait pas être le jouet de certains administrateurs.

Enfin, je serais partisan d'un statut du professeur. Il serait opportun de consigner dans un statut du professeur ses droits et ses devoirs. Mais il faudrait en même temps travailler ce statut en collaboration avec l'association des professeurs afin d'éviter ces bagarres perpétuelles entre cette association et l'administration de l'université.

Objectifs spécifiques quant aux administrateurs

C'est un fait qu'au cours des dernières années on a vivement contesté les administrateurs car tout allait mal dans les universités. Le public crie contre les étudiants parce que c'est malgré tout grâce à l'argent de la société que les étudiants peuvent fréquenter l'université. Ce qu'on oublie c'est qu'à cause de l'anarchie générale des années soixante, non seulement au Québec, mais un peu partout à travers le monde, on a pratiquement enlevé le pouvoir réel aux administrateurs de l'université. Puisque tout le monde a eu peur de poser des gestes d'autorité, les administrateurs universitaires

ont emboîté le pas. S'il fallait formuler quelques idées à leur sujet, elles seraient les suivantes: Je leur reconnaîtrais le droit d'exercer un certain leadership intellectuel mais à condition qu'ils fassent un peu de recherches ou qu'ils donnent un cours. Le poste de recteur, de vice-recteur académique, de doyen, devrait être confié aux grands universitaires et reconnus comme tels publiquement. Très souvent, hélas, ces postes exécutifs sont occupés par des incompétents, comme le dirait MacLuhan. Pour ces gens, c'est un moyen de rester à l'université en touchant des salaires élevés. Par là, je ne veux pas dire que tous nos administrateurs sont mauvais. Ce que je souhaite, c'est que ces postes soient occupés vraiment par des gens universitaires.

Les modes les plus adéquats de nomination de ces administrateurs sont les plus difficiles à trouver. L'idéal serait que cela se passe à l'intérieur de l'université et tous les professeurs avec doctorats y participeraient. Mais là, hélas, encore, une sorte de mafia interne pourrait se former et bloquer à la longue l'évolution véritable de l'université. Pour le moment, je pense que le Conseil des universités ou si on la crée, une Assemblée des universités, pourrait examiner les curriculum vitæ des candidats qu'on aurait nommés aux différents postes. Au moins, cette Assemblée pourrait inciter les universités à apporter beaucoup plus d'attention à ces problèmes qu'au jeu de la petite politique intérieure, pas toujours universitaire.

Ces mêmes administrateurs peuvent, évidemment, jouir de certains droits académiques, mais en tant qu'administrateurs, ils sont les premiers gardiens de l'université et ils sont rémunérés en plus pour l'exercice de leurs fonctions.

On pourrait élaborer un summum de l'administrateur universitaire en précisant le rôle de chacun. Pour le moment, ces rôles ne sont pas précis. Le vice-recteur des affaires dites académiques passe 90% de son temps à régler des problèmes financiers et administratifs. Le résultat est que certains vice-recteurs académiques ont juste le titre académique et sont très éloignés des problèmes académiques. De même pour les doyens. Les problèmes académiques sont laissés aux luttes des comités, très souvent scandaleuses. Il est donc urgent de distinguer au sein de l'université les fonctions d'administration pure, de celles qui sont d'administration proprement académique.

Conclusion

Il est entendu que dans mes réponses, j'exprime des idées sommaires qui demandent davantage d'élaboration. Par contre, ce que j'ai visé modestement, c'est une philosophie à long terme (peut-être pas la meilleure) à la lumière de l'histoire de l'éducation passée

et présente. J'ai rejeté dans ce questionnaire l'idée de la rentabilité des maisons du haut savoir. Qu'on parle de la rentabilité cela se défend en soi parce que le gouvernement doit justifier auprès du peuple la distribution de ses deniers. Par contre, il ne faut pas oublier le but essentiel de l'éducation; c'est que l'éducation elle-même ne signifie pas autre chose que la formation des hommes avec des connaissances élargies (y compris les futurs chômeurs !) au plein sens du mot.

Des robots et des automates on en a produit en masse et on a décerné des milliers sinon des millions de diplômes. A-t-on pour cela, et c'est la question qui me préoccupe, produit de meilleurs hommes ? Comment explique-t-on, et c'est le cas général dans tout le monde occidental, que l'université soit la cible de tous les étudiants ? Je ne parle pas de groupes minoritaires extrêmement politisés qui ont un but très précis. Cependant, il faut se rendre compte que l'immense majorité de nos étudiants vont à l'université parce qu'ils sont obligés d'avoir un diplôme pour obtenir un travail. Il me semble que c'est la même chose que dans le passé lorsqu'on a construit des églises en obligeant tous les hommes d'y aller sans y croire. Pourquoi alors, ne pas prendre quelques leçons du passé, et réfléchir en élaborant des plans qui pourraient être salutaires à l'homme de demain ou disons à notre communauté.

Instruire c'est bien beau et on peut multiplier les universités, ce que je souhaite. Pourtant, ce que j'aimerais bien voir au Québec et au Canada, c'est une université modèle ou pilote à laquelle on donnerait les moyens appropriés de mettre en pratique pendant quelques années ce qui pourrait être une université du siècle technologique. Voilà ce que les planificateurs devraient viser en oubliant le profit immédiat ou les plans chimériques, car l'éducation et la culture ne sont jamais rentables, mais ils peuvent être profitables à long terme si l'argent est bien investi. L'université, un peu partout à travers le monde doit exercer le leadership moral, car, qu'on le veuille ou non, il faudra toujours de ces forces morales qui dirigent le monde. Combattre les préjugés quotidiens, éclairer l'ignorance de tant de problèmes, enseigner la tolérance c'est déjà une tâche immense que l'université doit poursuivre. Si demain l'université devait réussir à produire des hommes et non pas de ces robots, je suis certain que la société serait prête à un sacrifice beaucoup plus grand pour promouvoir l'enseignement universitaire.

L'avenir de la société dépend de la qualité de son université. Je sais que la société hésite à appuyer les universités quand elle voit l'anarchie qui y règne, la démagogie qu'on y professe. Mais elle doit s'occuper du destin de son université. Je rêve peut-être d'une utopie . . . Le défi est grand. Il faut pourtant essayer de le relever malgré les déboires qu'a connus l'université cette dernière décennie.

Michael S. Hornyansky

the ENEMIES of LIGHT

This paper was delivered before a plenary session of A.C.U.T.E. at Memorial University, 31 May 1971. Professor Hornyansky, until recently chairman of the English Department at Brock University, has acquired quite a reputation as a writer and critic. He is presently member of the OC.U.F.A. Committee on Educational Policy. The nominal title of the A.C.U.T.E. symposium to which the following essay was contributed was : Whither the English Department in the next decade ?

The last time I spoke before this Association, I finished by asking what the hell had become of Sweetness and Light in our branch of the humanities. Since then, things have grown if anything murkier and more acid; and in my slow naive way, I've begun to discover the reasons. If today I concentrate on light and its enemies, it's not because I've given up in sweetness — try me: but because there is a limit to what we can achieve by being sweet in the dark.

The enemies of light which I shall briefly propose to you are all familiar, on campus and in the world at large, but seldom recognized as enemies, and therefore seldom discussed or (so far as I can see) resisted. This is because each of them is the shadow of something bright, the weakness of a strength misapplied. They are also intimately connected, as weaknesses often are: like expressions on one face, the types and symbols of infirmity. I will sketch a few of the connections,

and leave you to make the rest. Let me start with Dignity — not as Enemy No. 1, but as the least tendentious on my list.

I don't mean genuine dignity: being truly conscious of one's worth *and* its limits, bearing oneself accordingly, and being honoured therefor — like Chaucer's Knight. The enemy is the shell or image of dignity, longed for by the Prioress: to been *holden* digne of reverence. To the dwellers among shadows, what you are considered matters more than what you are. And the less you are, the more weight you attach to good report. A civil, douce disease, a pathetic Grundyish kind of weakness: next to which Pride is a splendid sin. And a malady mist incident to academics, meticulous about titles and orders of precedence. The collector of honours, awards, grants, scholarly fame for publications no one reads by choice, is a familiar ghost in our grove. So is the weak administrator, who instead of leading us stresses ceremony and ritual, the shadows of respect. He at least offends only by being tedious; but the teacher who stands on his dignity in the classroom — insists on respect, not invites it — offends against the light. His seeming opposite, who tries to escape false dignity by becoming the student's buddy and consoler (and winds up being the patsy), commits through cowardice the same sin in its inverted form. We who cannot distinguish our false semblance from our real face — how shall such paltry jugglers serve in the quest for truth ?

The popular wisdom of the comic strip tries to persuade us that dignity goeth before a pratfall. In tragic life, God wot, it often goeth scot-free — and the world consents to share one man's delusion. (Consider Charles de Gaulle, an astonishing example of how far sheer confidence in your own image can take you.) For it is a cunning seducer. In the young, it commonly begins as arrogance, the conviction that they are ready for anything and can perform anything, beyond criticism: a perfectly natural error, and no doubt healthier to start with than a crippling humility. But as the years pass, this touchiness about criticism matures into a sober sense of injured merit. Dignity is felt most keenly when impaired — or in the vernacular, when it's *threatened*. (Of all the sad refrains spread about by streetcar psychology, the saddest is "I feel threatened": for it is used to signify no actual menace by tigers, tyrants, or viruses, but by ghostly sappers undermining the wretched parapet of self.)

It's not hard to understand why this should be so. Academics are remarkable for the thinness of their generosity; the sense of merit injured in themselves goes hand in hand with a reluctance to recognize the genuine article in others. If you need corroboration, observe their behaviour at learned conferences such as this: a good paper is very seldom received with unreserved approval,

because that might somehow diminish the auditor; whereas faint damns and subtle cavils will show that he is nobody's dupe but a critic to be reckoned with. (Paradoxically, a bad paper is usually greeted with polite applause. Is this because no kudos will proceed from savaging a weak victim, or is there a kinder explanation ?) "We needs must love the highest when we see it," said Guinevere, confessing she'd had trouble seeing it. Like her, we see and love the highest so long as it is a pious abstraction, or a poet safely dead or off campus. But let it assume the lip, eye, and brow of Arthur, or one of our colleagues, and we begin at once to cast doubts upon his ancestry.

Yet there is a curious exception to this habit — not a sudden fit of humility or kindness, so much as a deep credulity. In our crepuscular world, one image we are ready to recognize and do homage to without thinking twice is the Accredited Expert. Hence the second enemy on my list: expert-worship.

Not long ago, the confession "I'm no expert" would have been followed promptly by *but*, with an assertion: such as, "but I know what I like." Nowadays it usually ends in a shrug and a waiting — for the expert to appear, the oracle to speak. An attitude far worse than the Philistine's self-confidence. Expert-worship poisons democracy while seeming to serve, and poisons most other arenas as well, particularly Academe. Professionally critical of so much else, we are willingly duped and disappointed by our readiness to swallow this.

As an exhibit, I quote Murray Ross, writing in *The Globe Magazine* last November:

> To suggest that one man — the president — can decide on all matters within the university is absurd. How could a president trained as an economist decide what is to be taught in science, or in philosophy, or in music ? Fortunately it is not feasible — and it is not possible: for most university Acts give authority in academic matters to professors.
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> (*Globe*, 14 Nov. 1970)

Modish and proper, notably in its deference to the profs; but in fact this pronouncement displays a misunderstanding of the whole academic mission. The second sentence is the key. Listen carefully to its echoes: atomic scientists humbly inexpert in political decisions; the Procurator of Judea thankfully concluding the affair was outside his jurisdiction. Like other worshippers of expertise, Ross confuses it with intelligence — if indeed he does not choose it *over* intelligence. And by so doing he washes his hands of his responsibilities, and instead of presiding allows the university

(it might be any university; it happens to have been York) to lurch on juggernaut fashion, himself a passenger in the driver's seat.

The truth is, or ought to be, that "a president trained as an economist" or anything else has, under his expert grasp of a specialty, a schooled intelligence: if he lacks this he has been badly educated (the word Ross does not use) and is a bad economist. His colleagues in science, philosophy, music have the same — or if not, they should be unloaded in favour of others who do. They can therefore make a reasonable case to him, why this or that should be taught, and he can judge that case in his capacity as an intelligent and reasonable man. If he took this approach, his university might grow as a healthy tree grows, instead of expanding like a fungus in mindless response to demands, pressures, and ambitions. (*Velut arbor ævo* is an excellent motto; I do not suggest that Toronto has lived up to it.) And he himself might hope to do his real job, namely to lead, by adjudicating reasonably among partisans who cannot see past their barricades. Instead he defers to the experts, and he abdicates. And failure slowly broadens down, from president to — dean, to departmental chairmen. A dean trained as a chemist clearly cannot evaluate a program in physics, let alone sociology, or assess the competence of a chairman in another "discipline" (happily, by installing the device of rotation he can pass the buck and incur no blame). A chairman expert in George Crabbe would hardly presume to challenge a colleague specializing in Wallace Stevens, let alone judge the competence of colleagues outside literature entirely — except in private mutters. Thus leadership melts away, and the abyss yawns. What rushes to fill it is the monstrous child of abdication, chief among the enemies of light: the committee. But I cannot expect more than a tolerant chuckle at that until we've had a look at its other parent.

You will have noticed my archaic assumption that a president ought to lead, and so should deans and chairmen after him, in their various fashions. The fact is they do not, and have not for so long that the very notion seems absurd. The reason for their failure (of which the worship of experts is one symptom) is I think a misunderstanding of power. Much of our world is infected with a myth about power, and a lust to acquire it — both of which flourish in shadows. We are preoccupied with power elites, establishments, magical corridors, manipulations, revolutions. Yet it is a daily irony that those who reach positions of power turn out to be powerless. Students press for years to be represented on a committee or board; once on, they find that this is not what they meant at all, and take off elsewhere. The academic climber crowns his ambition with an appointment as president, or dean, or whatever, and is baffled to find himself hamstrung. What has gone

wrong ? Mostly, it seems, the naive expectation (and nothing is harder ot shake than the naivety of intelligent people) that the office confers the power. The truth is, the office confers nothing except possibility. What is lacking is not just a recognition (in the pious cliché) that power involves responsibility; or even that it requires work — though this may put off many aspirants, including many students. What's missing is will. A position of power, without courage, is an empty office. This is especially true among academics, whose dependence on the intestines seldom ventures farther than the awful daring of a Gut Reaction. Power was once *pouvoir:* but those who can not, *ceux qui ne peuvent pas*, prefer to forget this and put their trust in magic.

The other face of power, the shining face, is Authority. But about this too there are so many misconceptions that I'd better start with a simple distinction. Strictly speaking, *power* is obeyed because it is based on the possibility of coercion; whereas *authority*, again strictly speaking, is obeyed because it implies the possibility of reasonable persuasion or demonstration. It follows that power doesn't really apply to our little world of the campus. The only coercive force here is the threat of dismissal: and by now this is so thoroughly hedged about, by cowardice among the top brass and by guarantees of due process, that its real sanction (by default) is rational authority, and an unjust dismissal occurs by and large only when the victim is a lousy press agent or unwilling to fight.

Authority, so understood, ought to be the animating principle of Academe. For it is close kin to the ideal to which we pay dutiful lip service under the name of academic excellence — and which I have so far been disguising with the metaphor of Light. Authority is that highest which we must love when we see it; and a deep hunger for it seems to come as standard equipment in the human being. But we can very easily avoid seeing it, and with false dignity at our elbow we will choose to do so: for light is pitiless, showing us to ourselves and to others as we are, not as we would be considered. And the powers of darkness offer us quick comfort and support. That person, they whisper, that leader whom we followed because he embodied judgment and wisdom, is actually an arrogant son-of-a-bitch, moved by the crassest ambition, and held up only by the power of his office. (The Arthur story repeated, as you see.) And by the same token an argument, which seemed to be wholly irresistible in the glare of noonday, is clarified by the friendly twilight — into one man's personal opinion, which moved us not by the force of reason but the only force there *is* in human affairs, the force of personality. Two particular enemies of light are at work here, and worth a swift glance: one is relativism, which says everything depends on where you stand; and the other

is armchair psychiatry, which says the content of an opinion is insignificant compared to the motives behind it — motives we are all expert to diagnose. (It will be obvious to some of you, for example, that everything I am saying is the direct and predictable result of my being middle-aged, sexually past it, embittered by rejection and dreams turned to vinegar. There's really no other reason to *hold* any views, is there ?) — If these are the rules of the game, and in fact they often are, why then our occupation's gone: for criticism becomes the assertion of one personality against the field, with no conclusion possible save what can be supplied by vote; and teaching becomes either the incubation of fledgling personalities, or the stamping of our likenesses on unformed minds.

And the leaders we choose, on our darkling plain, will be either zero people who threaten no one, or charismatic types whose *style* persuades us that they are the authority we dimly seek. Neither will satisfy us long, for neither delivers the goods. Accepting this as the regrettable but natural state of affairs, we hail as our saviour the arch-enemy of light, the committee. Here too is the shadow of a possible brightness. One might well expect a group of rational people to provide corporate leadership, and a distillation of several wisdoms. But experience soon overturns our hopes. Committees raise such a flap in recognizing Something Must Be Done that the time for doing it slips by. They ensure that all views are aired — and that what emerges is too often the quintessence of wind. Instead of sifting out the best they are subverted by compromise and majority votes, and manage only to assert corporate mediocrity. For the crucible of debate is damped down by exhaustion or hunger, so that what it forges is not gold but trumpery amalgam. The distilled wisdom of this year, or this week, is wholly transformed in the next heat. Small wonder that in popular myth, the committee is a mechanism which strives to design a horse but produces a camel. It is what we mean when we speak of a *council* of despair.

You will perceive that the committee is my cover name for policy-making by democratic vote. (Committees which share the work or furnish advice are a different matter, and not my target.) I doubt if there is much use in building a case against academic democracy. It is a fever, not a viewpoint, and must run its course. Those who see its idiocy — and a quick survey over the last two days persuades me that they are not all over 35, praise be — need no convincing, and those who don't will find out the slow, hard way. Its basic premise that all academics are equal, which is held as self-evident in more departments than one, holds as much water as the preamble to the American constitution: and because our chief concern is not life or property or even happiness but the

pursuit of excellence, it is a premise doubly inappropriate to the campus. Even if our stock-in-trade were expertise, we would be demonstrably unequal; but since what we ought to purvey is wisdom and judgment, which are not prerequisites in any degree programme nor yet conferred equally on all by experience, common prudence suggests that if a vote is necessary at all, we should be damn careful about who has the franchise.

To any young Turks among you — and even more, to any timid sultans who have cowered before the popular banners — I offer three obvious crunch points where democratic rule breaks down: hiring, curriculum, and firing. A committee charged with hiring is infected with predictable weaknesses but also, surprisingly, with a Utopian rigour: it demurs over the best applicants because they are not ideal, and finally settles for a left-over candidate who isn't even good. A curriculum committee falls victim to trendiness and whim, devising new courses of mind-blowing relevance and the vision of an ideal curriculum which another meeting will reverse. A committee responsible for firing is paralyzed by fear — the fear of each member that there but for the grace of hazard goes he, and the usual academic fear of casting the first stone, except in private gossip. (I speak here not of firing the obvious incompetent, though that's hard enough, but of unloading the mediocrity — which is damn near impossible. And yet this is what the pursuit of excellence must imply.) Defenders of the democratic faith tell me that a popular uprising is the only way to eject or prevent visible tyranny. It may be true, somewhere; yet I remain skeptical even on this point, for in my limited happy experience I've met very few certifiable academic tyrants — but a great many academic sheep.

Whither the English Department in the next decade ? If I am to make one brief venture into prophecy, I would forecast a steady withering (if that is conceivable): the armies of darkness gaining strength, taking special heart from relativism and dilute psychiatry and trendiness, until the quondam Department of English reaches its nirvana — a non-stop sensitivity group whose sole aims are *experience* and a full rich subcortical communication, relying mainly on those media where reflex reaction can be substituted for critical response.

I might end there. But as a kind of *Nachtisch,* I'd like to sum up with another simple-minded metaphor. The sacred grove, or academic woodlot, is populated chiefly by two species of bird. On the one side, Mother Careful's Chickens — a species of flightless rail, gray from birth; easily panicked, above all by sudden noises and other species; preserving a complex and subtle pecking order, yet given to huddling in flocks when nervous, or jostling

each other off high branches when serene; and recognized in the field by a low intricate warble, which Peterson transliterates as "What my learned colleague is saying is of course nothing noo," or in some areas, "I should have thought that was going a bit *too far.*" On the other side, the Callow Twit, notable for fragments of vellum and wool still adhering to its topknot (so that even when mature it seems young); apparently aggressive but in fact easily frightened into coveys; characterized by hypostasis of the critical apparatus (watch out below), a habit of spreading its tail, and an appetite for only one type of ambiguity. Its call note is a crude *yuk,* its song the phrase *I got it,* repeated thrice in a rising cadence and followed by a strange thumping noise (or in Peterson's account, a dull *Phd*). Other birds inhabit the garden, to be sure: among them the hairy nitpicker, the stoned tern, the lesser peawit, and the double-breasted chat. But the best place and time to enjoy them is later, at the nearest watering hole. And in case some of you are misled into wasting time by trying to categorize me — in vacant or in vengeful mood — I'll prevent you by confessing that I am, of course, no bird at all, but a wandering voice, crying in the wilderness.

Gideon Rosenbluth

the ACADEMIC FREEDOM of ADMINISTRATORS

Professor Rosenbluth, a Full Professor in the Department of Economics at the University of British Columbia, is a past president of the C.A.U.T. Concerned about the academic freedom of the total community of scholars, he has expanded in the following paper the notes he prepared for the A.F. & T. Committee on the rights of department heads and deans.

It is generally agreed that department heads and deans do not have tenure in their administrative positions. It would, however, be wrong to jump to the conclusion that the dismissal of a department head or dean from his administrative post should never become the business of the Academic Freedom and Tenure Committee. After all, the Committee handles a good many "non-tenure" cases.

I suggest that the Committee should treat complaints arising in connection with the dismissal of department heads or deans from their administrative posts on the basis of the same principles as those it follows in other "non-tenure" cases.

This means first that there should be no dismissal without a valid academic or administrative reason. Of course, the termination of a fixed-term appointment to an administrative post, such as has long been advocated by C.A.U.T., constitutes a valid reason, and such an

appointment should not be regarded as carrying an implicit right of renewal. Moreover, the range of valid academic or administrative reasons for dismissal is very wide, and should include such things as acting in disharmony with university policy in academic priorities, for instance (if there *is* such a policy). On the other hand, such charges as "making life difficult for the dean" do not provide a valid reason, since a department head who properly represents the interests of his department is bound to make life difficult for his dean.

Secondly, my proposal means that in the case of a dismissal proper (that is to say, not in the case of the termination of a fixed term appointment), the elements of due process and natural justice must be present in the procedure by which the decision to dismiss is taken. This implies that before dismissal is recommended to the Board, the individual concerned must be informed what the "charges" are, who is making them, and what the relevant evidence is, and must have an opportunity to answer in the presence of those making the charges and before some committee or individual other than the superior officer who is trying to effect the dismissal.

It would follow that the Academic Freedom and Tenure Committee should be willing to entertain complaints regarding dismissal for improper reasons, and complaints that the reasons have not been properly established.

While these proposals would represent a change from the present practice of the Committee, I think that all the arguments that justify the present activities of the Committee extend to these "administrative" cases. In the main, we justify our special concern for academic freedom and tenure, not in terms of the rights of the individual, but in terms of the requirements of a healthy university. In a healthy university the individual faculty member must be protected from attacks that are based on disapproval of the problems he deals with or the views he expresses in his research or in his teaching. We have not adequately recognized the fact that similar protection is required for other academic activities besides teaching and research. Department heads and deans play a role of leadership in the formulation of academic policy and the setting of academic priorities within a department, within a faculty, and in the wider university context. It is very important that they should have the academic freedom to advocate the policies they consider best, without having to fear that this may expose them to victimization by their superiors, or by outside forces acting through their superiors.

Of course this does not mean that administrative officers should be free to obstruct an academic policy once it has been decided

upon, if they happen to disagree with it. I certainly think that failure to implement an academic policy or a set of academic priorities that has been properly decided upon by a senate, a faculty, or a department would be a valid ground for the removal of the officer concerned. The important point is that there must be a valid ground and that it must be properly established. Having views or advocating policies on academic matters that are disapproved of by superiors or others is not a valid ground.

There is a second major reason, in terms of the health of the university, why an administrative officer must be protected against arbitrary removal. Such an officer must play a double role, representing the interests of the university as a whole and the administration in particular to the department or faculty which he leads, and also representing the interests of his department or his faculty in the wider counsels of the university and before the administration. The dean and department head are necessarily in the front line in the struggle for the approval of new academic programs, new courses, new appointments, budget allocations, salaries, buildings, etc. A properly functioning university requires a balancing of these two roles. If one is to be stressed, it should be that of representing the interests of his department or faculty, since anti-academic pressures, where they exist, tend to come from above.

Now if a man can be removed from office at the pleasure of his superiors, the function of representing the interests of his department is sure to suffer, and he is more likely to be a "tool of the administration" than he would be if he were protected against arbitrary action.

The third major ground for my proposal has to do with the individual concerned. The individual does have some rights, and among them is protection against unjustified damage to his professional reputation. When he is dismissed (we are not talking about resignation) from his administrative post before the end of his fixed term, or when he is dismissed from a post that has no fixed term, this establishes a presumption in the minds of the academic public, that there has been some gross incompetence or malfeasance. The general academic view of such appointments without term is that they are "during good behaviour", not "at the pleasure of their superiors". The only way to ensure that the damage to reputation either does not arise, or, if it arises, is justified, is to ensure that valid grounds for dismissal are properly established.

Now, I should like to discuss some of the reasons I have heard advanced for not taking up complaints of arbitrary dismissal relating to administrative posts. One is that the job of the C.A.U.T.

is to protect academic interests and not to interfere with hiring and firing policies that merely concern the administrative structure. But this notion of our business is surely based on the false distinction between academic and administrative matters which we have repeatedly rejected, and which is rejected, if I remember rightly, in the Duff-Berdahl Report. As I have indicated in this discussion, the department head or dean plays a very important *academic* role. He is not "just an administrator".

A related view, or rather attitude, is that the head or dean is part of "management" and that the C.A.U.T. or the faculty association is in a posture of opposition to "management" and should therefore not take up the complaints of members of the management team. This attitude is hardly ever openly admitted, but I am sure that it is, perhaps sub-consciously, a major factor in the very strong and persistent opposition on the part of active members of faculty associations to proposals of the present kind.

The C.A.U.T. has, however, always rejected the view that it is a union in opposition to management, and has stressed the point that the faculty should be managing the university. As for the specific functions of deans and department heads, I have already indicated that a major part of their function is to be the advocate of the interests of their department and faculty before "management", rather than being part of management.

A third argument is that once we admit complaints of the type I have suggested from deans and department heads, the C.A.U.T. and the A.F. & T. Committee will be swamped with all kinds of other complaints from deans and department heads. This is the "thin end of the wedge" argument which has been so brilliantly exposed by Cornford in his *Microcosmographia Academica*. The "thin end of the wedge" argument is always an argument for doing nothing and is never valid. It is no more true in the case of deans and department heads to say that if we deal with one type of complaint we must deal with all, than it would be in the case of other faculty members. After all, we have no trouble rejecting a complaint from an assistant professor to the effect that a colleague has interfered with his research productivity by stealing his girl friend, or even his wife. Why should we have any difficulty turning back "inadmissible" complaints from deans and department heads ?

A fourth type of argument which I have seen used, in writing even, in a specific case, is that we favour limited terms for deans and department heads, and therefore should not take action when such an appointment "without term" is terminated by the board, no matter how it is terminated. One only has to state this argument fully to realize that it is a staggering *non sequitur*. When there is a limited term for deans and department heads, this means that

there is a general arrangement to this effect, that everybody knows about it, and that terms are not arbitrarily shortened or lengthened by the administration. What possible relation can this have to a situation in which the administration arbitrarily cut short a term, and arbitrarily select the individual who is so treated ? When we say that we favour a limited term for department heads we surely do not mean that we favour a situation in which the administration is free to decide when they will or will not limit a term, whose term they will or will not limit, and moreover to do all this without prior announcement or agreement.

Finally, there has been the argument that complaints relating to the dismissal of a department head should be taken up if other members of the department launch or support the complaint, but not otherwise. The A.F. & T. Committee could then take up such complaints without departing from its present practice since, in a formal sense, it could be claimed that the academic freedom of other department members was involved.

But this represents an artificial solution to an artificial problem existing in the minds of those who have difficulty in relating the concept of academic freedom to "administrative" positions. The merits of a complaint do not depend on whether other members of the department find it prudent to give their support.

We should recognise that there is nothing illogical in speaking of the academic freedom of department heads and deans, and that there is an inconsistency in our present practice of denying them the protection of the A.F. & T. Committee.

SALARY SCALES FOR TEACHERS AT CANADIAN UNIVERSITIES AND COLLEGES, 1971-1972 - Data supplied to the Dominion Bureau of Statistics by the institutions

Institutions	Deans	Full Professors		Associate Professors	Assistant Professors	Rank immediately below assistant professor	Other ranks
		Department Heads Directors	Others				
	$	$	$	$	$	$	$
Acadia University [1]							
Minimum	-	-	-	-	-	-	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
University of Alberta [2]						Lecturer	
Minimum	-	20 230	19 730	14 630	10 920	8 215	-
Maximum	-	-	-	19 680	14 580	10 870	-
Annual increment	-	800	800	680	530	450	-
Althouse College of Education						Lecturer	Instructor
Minimum	-	18 325	18 325	13 850	11 475	9 050	7 825
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Collège de Bathurst						Senior	Junior
Minimum	-	-	15 000	12 500	10 000	8 200	6 900
Maximum	-	-	15 000	-	12 950	12 250	10 200
Augmentation annuelle	-	-	-	350-425	350-425	350-425	350
Brandon University						Lecturer	Lab. Instructor
Minimum	19 500	17 500	17 600	13 500	9 000	9 000	6 900
Maximum	23 000	20 900	18 300	18 600	15 100	11 050	10 500
Annual increment	1 860	1 600	600	1 375	1 200	900	1 000
University of British Columbia						Instructor II	
Minimum	-	15 800	15 800	11 700	9 500	7 800	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Brock University							
Minimum	-	-	19 000	14 700	11 700	9 300	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-

[1] No minimum stated.

[2] Revisions planned for 1971-1972.

ÉCHELLES DE TRAITEMENT DES PROFESSEURS DES UNIVERSITÉS ET DES COLLÈGES DU CANADA, 1971-1972 - données recueillies par le Bureau fédéral de la statistique

Institutions	Doyen	Professeur titulaire		Professeur agrégé	Professeur adjoint	Rang inférieur à celui de professeur adjoint	Autres
		Directeur de département	Autres				
	$	$	$	$	$	$	$
University of Calgary [1]						Instructor	
Minimum	-	1	19 715	14 630	10 920	8 215	-
Maximum	-	-	-	19 665	14 575	10 865	-
Annual increment	-	-	800	680	530	450	-
Canadian Memorial Chiropractic College [2]							
Minimum	20 000	15 000	14 000	12 000	11 000	9 000	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Carleton University						Lecturer	
Minimum	-	-	18 500	14 400	11 300	-	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
University of Guelph						Lecturer	Instructor
Minimum	-	-	18 700	14 700	11 500	9 500	8 100
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Huron College						Lecturer	Instructor
Minimum	-	-	-	13 500	10 000	8 500	7 500
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Collège Jésus-Marie							
Minimum	11 850	-	-	-	7 600	6 900	-
Maximum	-	-	-	-	11 850	10 900	-
Augmentation annuelle	-	-	-	-	400	400	200
University of King's College [3]							
Minimum	-	-	-	-	-	-	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-

[1] Honorarium of $500 - $2,000 paid on a formula basis in addition to rank salary.

[2] These are not final scales for 1971-1972.

[3] No minimum stated.

SALARY SCALES FOR TEACHERS AT CANADIAN UNIVERSITIES AND COLLEGES, 1971-1972 - Data supplied to the Dominion Bureau of Statistics by the institutions

Institutions	Deans	Full Professors		Associate Professors	Assistant Professors	Rank immediately below assistant professor	Other ranks
		Department Heads Directors	Others				
	$	$	$	$	$	$	$
King's College (Ont.)						Lecturer	
Minimum	-	-	17 800	13 450	11 150	8 800	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Lakehead University						Lecturer	
Minimum	-	-	18 790	14 870	11 915	10 050	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Laurentian University						Lecturer	Instructor
Minimum	-	20 000	20 000	15 500	12 200	10 090	7 900
Maximum	-	25 250	25 250	20 050	15 700	12 540	10 000
Annual increment	-	750	750	650	500	350	300
University of Lethbridge						Lecturer	
Minimum	-	-	19 920	14 845	11 065	8 265	-
Maximum	-	-	-	19 915	14 840	11 060	-
Annual increment	-	-	850	725	540	400	-
Collège Maillet						Chargé d'enseignement	
Minimum	-	-	-	-	7 420	5 796	-
Maximum	-	-	-	12 208	12 408	6 496	-
Augmentation annuelle	-	-	-	12%	12%	12%	-
University of Manitoba							
Minimum	-	-	17 000	12 900	10 000	-	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
McMaster University						Lecturer	
Minimum	-	19 900	18 400	14 400	11 100	8 500	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-

ÉCHELLES DE TRAITEMENT DES PROFESSEURS DES UNIVERSITÉS ET DES COLLÈGES DU CANADA, 1971-1972 - données recueillies par le Bureau fédéral de la statistique

Institutions	Doyen	Professeur titulaire		Professeur agrégé	Professeur adjoint	Rang inférieur à celui de professeur adjoint	Autres
		Directeur de département	Autres				
	$	$	$	$	$	$	$
Memorial University						Lecturer	Instructor
Minimum	-	-	18 000	14 200	10 900	8 300	7 000
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Université de Moncton						Chargé d'enseignement I	II
Minimum	-	-	17 100	13 500	10 100	8 200	7 000
Maximum	-	-	-	-	-	-	-
Augmentation annuelle	-	-	-	-	-	-	-
Mount Allison University							
Minimum	-	-	17 000	13 200	10 300	8 200	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Mount Saint Vincent University							
Minimum	-	-	none stated	none stated	-	-	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
University of New Brunswick						Lecturer	
Minimum	-	18 700	18 700	14 700	11 200	9 000	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Nipissing College						Lecturer	Instructor
Minimum	-	-	19 700	16 000	12 000	9 500	7 500
Maximum	-	-	-	19 000	15 600	11 500	9 300
Annual increment	-	-	600	600	600	400	300
Notre Dame University of Nelson [1]		[2]				Instructor	
Minimum	-		13 700	10 700	8 400	7 025	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	350	300	300	250	-

[1] These are not final scales for 1971-1972.

[2] $500 above rank salary.

SALARY SCALES FOR TEACHERS AT CANADIAN UNIVERSITIES AND COLLEGES, 1971-1972 - Data supplied to the Dominion Bureau of Statistics by the institutions

Institutions	Deans	Full Professors		Associate Professors	Assistant Professors	Rank immediately below assistant professor	Other ranks
		Department Heads Directors	Others				
	$	$	$	$	$	$	$
Nova Scotia Technical College							
Minimum	-	-	none stated	none stated	-	-	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Université d'Ottawa						Chargé de cours	
Minimum	-	18 470	18 470	13 940	10 660	8 670	-
Maximum	-	32 000	32 000	-	-	-	-
Augmentation annuelle	-	-	-	-	-	-	-
Queen's University							
Minimum	-	-	18 800	14 800	11 300	-	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
St. Francis Xavier University						Lecturer	
Minimum	-	-	18 200	14 300	11 100	9 200	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
University of St. Jerome's College						Lecturer	
Minimum	-	-	19 080	14 703	11 400	9 000	-
Maximum	-	-	-	19 080	14 703	11 400	-
Annual increment	-	-	-	-	-	-	-
University of St. Michael's College						Lecturer	
Minimum	17 800	17 800	17 800	13 400	10 800	8 900	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Université Saint-Paul [1]						Chargé d'enseignement	
Minimum	-	-	15 000	12 500	9 500	7 500	-
Maximum	-	-	25 500	15 000	12 000	9 100	-
Augmentation annuelle	-	-	500	500	400	400	-

[1] L'échelle n'est pas définitive.

ECHELLES DE TRAITEMENT DES PROFESSEURS DES UNIVERSITÉS ET DES COLLÈGES DU CANADA, 1971-1972 - données recueillies par le Bureau fédéral de la statistique

Institutions	Doyen	Professeur titulaire		Professeur agrégé	Professeur adjoint	Rang inférieur à celui de professeur adjoint	Autres
		Directeur de département	Autres				
	$	$	$	$	$	$	$
Collège Sainte-Anne						Chargé d'enseignement	
Minimum	-	-	-	10 000	8 600	7 000	-
Maximum	-	-	-	-	-	-	-
Augmentation annuelle	-	-	-	400	300	300	-
Simon Fraser University [1]						Instructor	
Minimum	-	-	15 800	11 700	9 500	7 800	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
University of Toronto							
Minimum	-	-	17 800	13 400	10 800	8 900	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Trent University						Lecturer	
Minimum	-	-	19 100	14 600	11 250	8 900	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Trinity College							
Minimum	18 300	18 300	17 800	13 400	10 800	8 900	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
University of Victoria (B.C.)							
Minimum	17 500	16 500	15 500	12 200	9 500	not established	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
Victoria University (Ont.) [1]						Lecturer	
Minimum	-	-	17 300	13 000	10 500	8 600	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-

[1] These are not final scales for 1971-1972.

SALARY SCALES FOR TEACHERS AT CANADIAN UNIVERSITIES AND COLLEGES, 1971-1972 - Data supplied to the Dominion Bureau of Statistics by the institutions

Institutions	Deans	Full Professors		Associate Professors	Assistant Professors	Rank immediately below assistant professor	Other ranks
		Department Heads Directors	Others				
	$	$	$	$	$	$	$
Waterloo Lutheran University						Lecturer	
Minimum	-	-	19 200	14 800	11 600	9 400	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
University of Western Ontario						Lecturer	Instructor
Minimum	-	18 325	18 325	13 850	11 475	9 050	7 825
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-
University of Windsor						Lecturer	
Minimum	-	-	19 200	15 650	11 750	9 450	-
Maximum	-	-	-	21 000	16 300	12 600	-
Annual increment	-	-	8%-max.	8%-max.	8%-max.	8%-max.	-
University of Winnipeg						Lecturer	Instructor
Minimum	-	-	17 500	13 500	10 000	-	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	500	450	350	300	250
York University						Lecturer	
Minimum	-	-	18 200	13 700	11 100	8 800	-
Maximum	-	-	-	-	-	-	-
Annual increment	-	-	-	-	-	-	-

CANADA
PROVINCE OF BRITISH COLUMBIA
CITY OF BURNABY

REPORT OF THE HEARING COMMITTEE ESTABLISHED TO HEAR DISMISSAL CHARGES BROUGHT BY SIMON FRASER UNIVERSITY, BURNABY, BRITISH COLUMBIA AGAINST PROFESSOR PRUDENCE WHEELDON, A FACULTY MEMBER OF THAT UNIVERSITY

COUNSEL:

Mr. P. Leask, Mr. J. Baigent } representing Simon Fraser University or President K. Strand

Professor C. Carr, Professor R. Field } representing Professor P. Wheeldon

HEARING COMMITTEE:

Professor P. Burns
Faculty of Law
University of British Columbia

Professor H. Weinberg
Department of Psychology
Simon Fraser University

Professor D. L. Johnston — Chairman
Faculty of Law
University of Toronto

Simon Fraser University — Professor Prudence Wheeldon Dismissal Hearing Report

I. The Facts

Simon Fraser University received its charter under the Universities Act[1] and admitted its first students in September, 1965. It presently has a student enrollment of approximately 5,000 and operates through the twelve months of the year on a trimester basis.

In September 1968 following a referendum of the permanent teaching faculty and approval by the Board of Governors the Simon Fraser University Statement on Academic Freedom and Tenure (SAFT) became effective. It resulted from months of discussion between the Faculty Association Executive and representatives of the University's Board of Governors.

1. Stats. B.C. 1963, c. 52

The pertinent part of SAFT, for purposes of dismissal during the term of a faculty member's contract, is Article 4, entitled "Dismissal Procedures", which reads as follows:

IV *Dismissal Procedures*

4.1 No faculty member shall be dismissed except for cause. Before dismissal procedures are formally instituted, the faculty member's Department Head or Chairman shall discuss the matter with him. If agreement is not reached the faculty member shall have the right to a formal hearing, conducted according to the following procedures:

a. Formal dismissal procedures can only be initiated by the Dean of the Faculty, Vice-President, Academic, or by the President. The faculty member involved shall be informed in writing by the Dean, the Academic Vice-President, or by the President of the grounds for dismissal and any charges upon which those grounds are based.

b. If formal procedures are necessary the President will set up a Hearing Committee to determine whether there is cause for dismissal. The faculty member will be given a reasonable period of time to prepare his defence.

c. The Hearing Committee shall be composed of three members who are faculty members with tenure at a university. One member shall be named by the aggrieved faculty member, a second member shall be named by the President, and the two nominees shall then select a mutually acceptable third member who shall be Chairman of the Committee. If any impasse in selecting a Chairman is not resolved within three weeks, the power of appointment of the Chairman shall be vested in the Chief Justice of the Supreme Court of British Columbia or in his designate if the Chief Justice is a member of the Board of Governors of any university.

d. (i) The faculty member involved may appear in person at his Hearing and may be represented by counsel, who may be a practising lawyer or some other representative chosen by the faculty member.

(ii) All parties and their counsel have the right to cross examine.

(iii) All parties involved are permitted to appear with counsel at all hearings of the Hearing Committee.

(iv) Only the grounds for dismissal and evidence relevant thereto shall be considered by the Hearing Committee. The originators of the charges shall be present.

(v) At least two weeks' notice of the time and place of the Hearing should be given to all persons concerned.

(vi) The hearings shall be held *in camera* and the evidence kept confidential.

(vii) The decision shall be by majority vote.

e. The Hearing Committee shall report its decision to the President. The President may ask the committee to reconsider its decision if he questions the procedures. The President will not recommend dismissal to the Board of Governors if the Hearing Committee finds there is no cause for dismissal.

f. Within one week of the termination of the Hearing, the President shall send to the faculty member involved a statement of the findings of the

Hearing Committee. Access to the transcript must be provided to the faculty member or his counsel if such is requested.

g. Unless and until the Hearing Committee recommends that the faculty member involved be dismissed, and the Board of Governors acts upon such recommendation from the President, the faculty member shall retain his position in the University at his full salary. He may be temporarily relieved of his duties at his own request, or he may be suspended temporarily from teaching by the President. Suspension does not mean loss of pay.
If dismissed, a faculty member shall continue to receive full salary for not less than three months from the date of notification of dismissal.

This Hearing Committee came into being through the implementation of Article 4 when the President of the University, Dr. Kenneth Strand, suspended Professor Prudence Wheeldon and levied certain "charges" against her based on specified "grounds". Those charges and grounds read as follows:

Mrs. P. Wheeldon

Grounds for Dismissal for Cause

1. The first ground for dismissal is that Mrs. Wheeldon has failed to perform her contractual duty to teach her assigned scheduled courses.

2. The second ground for dismissal is that Mrs. Wheldon violated her duty to, and abused the trust of, her students by failing to provide the instruction in the courses for which they enrolled.

These two grounds are based on the following charges:

(a) She asserted that she was "on strike".

(b) She failed to confirm that she would teach her regularly scheduled classes when so requested in a letter dated September 24th, 1969 from Dean Sullivan; and she also failed to confirm that she was teaching or would teach her regularly scheduled classes when so requested in a letter dated September 30th, 1969 from Dr. L. Srivastava, Acting Academic Vice-President.

(c) She failed to teach her assigned scheduled courses, PSA 121 and PSA 376 during the period September 24th to October 2nd, 1969.

Professor Wheeldon first joined the University as an Assistant Professor in the Political Science, Sociology and Anthropology Department (PSA) on September 1, 1967. Her initial contract carried a two year term. She received a one year automatic extension in October, 1968. She received notice of a further one year renewal of contract in a letter from Acting President Srivastava dated August 28, 1969. This one year renewal gave Professor Wheeldon concern on three grounds. First she had anticipated she would receive a two year renewal which she considered the "norm" applicable to her. Second she felt that the shortness of time between her first notification of this renewal and the Board of Governors' meeting confirming the same gave her an insufficient period in which to appeal the decision. Third she was distressed over the absence of reasons for the one year renewal rather than the two year renewal she anticipated. These items of individual concern were one aspect of what Professor Wheeldon and a number of her colleagues in PSA saw as a deteriorating relationship between their Department and the University Administration. While she and the Dean of Arts were attempting to resolve her individual concern early in September an engulfing wave

of escalating events involving group grievances overtook them resulting, *inter alia,* in:

(a) a strike by Professor Wheeldon and seven of her faculty colleagues in PSA at 12:30 p.m. on September 24, 1969,

(b) the President suspending Professor Wheeldon and her seven colleagues from teaching and committee duties on October 3, 1969, and

(c) the President formally invoking dismissal charges and proceedings against her on October 17, 1969.

Professor Wheeldon and six of her suspended colleagues, Professors S. Ahmad, M. Briemberg, L. Feldhammer, J. Leggett, D. Potter and subsequently K. Aberle, requested that the dismissal charges against them be heard collectively by a single hearing committee established under Article 4 of SAFT. That Committee composed of Professors J. S. Dupré, W. Livant, and E. E. Palmer, Chairman, held hearings on May 15, 1970 and July 21 and 22, 1970, adjourned to consider procedural matters and then rendered a decision. The core of that Committee's conclusions[2] was that the faculty members concerned could not be assured any ruling would be implemented by the other party, that the Committee could not guarantee the faculty members complete procedural protection, that a fair and just hearing had been precluded by the acts of the University's President and that he therefore could not prove just cause. That Committee unanimously found there was no cause for dismissal of the faculty members and consequently that the President could not recommend dismissal to the Board of Governors.

The President indicated he would not accept the decision of that first Committee on the grounds that it had not heard any evidence and therefore could not make any decision on the merits of the case. The Executive of the Faculty Association on July 30, 1970 also rejected the decision of that first Committee and stated that an opportunity for a new hearing must be given. On July 30, 1970, the President offered a new hearing committee to the suspended faculty members and indicated that failure to reply by August 4, 1970 would be taken as rejection of the offer.

Four of the faculty members, Professors Ahmad, Briemberg, Feldhammer and Wheeldon, agreed to a new hearing committee, albeit under protest. Two others, Professors Aberle and Potter, did not request a new hearing committee and by a decision of the Board of Governors on August 17, 1970 were dismissed with three months' salary.[3] It was reported[4] that with respect to the seventh faculty member, Professor Leggett, the President lifted the suspension and dismissal charges on the basis that his contract expired on August 31, 1970, and he was not renewed.

During the period prior to the selection of that first Committee certain questions concerning the status and force of SAFT developed. To resolve these, Professor Wheeldon instituted a law suit on December 5, 1969 in the British Columbia Supreme Court. Mr. Justice Hinkson gave judgment on June 18, 1970, *Wheeldon v. Simon Fraser University.*[5] He found that SAFT formed no part of the contract of employment between a faculty member and the University and that when the Faculty Association and the Board of Governors adopted SAFT they agreed to a statement of policy and not a document which was intended to have legal consequences.

2. As reported in the C.A.U.T. Bulletin, Autumn, 1970, Vol. 19, No. 1, p. 73.
3. See **ibid.**, pp. 70-71, for a detailed report of these events
4. **Ibid.**
5. (1971), 15 D.L.R. (3d) 641 (B.C.S.C.).

On January 29, 1970 the first of the individual hearing committees was established to hear charges against Professor Nathan Popkin (the one suspended faculty member whose case was not considered collectively with the other six). That Committee, comprised of Professors J. G. Nelson, J. Zaslove and G. Rosenbluth, Chairman, held hearings on 33 days between March 13, 1970 and October 4, 1970. It rendered a decision of no cause for dismissal on November 18, 1970.[6] Professor Popkin was subsequently reinstated.

The present Committee, the second of the individual hearing committees, was established on December 15, 1970 to hear charges against Professor Prudence Wheeldon. It was constituted by Professors Peter Burns, Faculty of Law, University of British Columbia, Harold Weinberg, Department of Psychology, Simon Fraser University and David Johnston, Faculty of Law, University of Toronto, Chairman.

II. Progress of Hearings

The present Committee held hearings on 25 days in four different sessions between January 21, 1970 and June 14, 1970, approximately half of those days being taken up with procedural argument and rulings and the remainder with testimony of witnesses and documentary evidence. The core of the University's case against Professor Wheeldon was rooted in her strike action. A major segment of her defense argument was a claim of justification for the strike based on alleged oppressive conduct by the University Administration against her and her colleagues in PSA. To substantiate that claim Professor Wheeldon believed it necessary to have access to documents in the files of various persons and committees within the University. By June 11th the University Tenure Committee (UTC) had resisted production of a list of documents. The President's office had produced a list of 284 documents believed to be in the power of the special appointed Departmental Tenure Committee (DTC) for PSA, the Dean of Arts, the UTC, the chairman or former chairmen of PSA, various PSA or other department faculty members, the trusteeship committee for PSA or the President in response to the Committee's relevance rulings. However, only those documents actually in the sole power of the President, numbering five, had been produced.

At this point Professor Wheeldon requested a ruling that the University was a party to these proceedings to permit discovery of additional documents. The Committee ruled that the University was a party. The Committee cautioned that this ruling should not disturb the separation of functions of specified committees as established under SAFT. As a result of this ruling the President requested an indefinite adjournment of the hearings and called a special meeting of the University's Board of Governors for Sunday, June 13th under section 52 of the Universities Act.[7] S. 52 reads:

> If any question arises about the powers and duties of the Convocation, the Chancellor, the President, the Senate, the Faculties, or any officer or servant of the University, the same shall be settled and determined by the Board, and its decision is final.

The next day the President delivered a letter to the Committee, dated June 14, 1971, which read:

> At a Special Board meeting held on June 13, 1971 the following resolution was passed:

6. That decision is published in the C.A.U.T. Bulletin, Winter, 1971, Vol. 19, No. 2, pp. 3-29.
7. Stats. B.C. 1963, c. 52.

Resolved That:
The Board of Governors of Simon Fraser University hereby suspends the operation of Section IV of the Statement on Academic Freedom and Tenure as it applies to Mrs. Prudence Wheeldon.

At the same time the President informed Professor Wheeldon that as a result of the Board of Governors' decision he had decided to reinstate her. Through counsel he gave his undertaking that none of the events prior to Professor Wheeldon being placed on suspension on October 3, 1969 would be used in any subsequent dismissal action against her. However, he refused to withdraw the charges against her, taking the position that the hearings had been terminated by the action of a body external to him, the Board of Governors, and not by his own action.

On June 15th the President sent the following message to the Committee in response to its request:

> In the light of the action by the Board of Governors referred to in my letter to you of June 14th, I consider that your responsibilities as a Hearing Committee are now terminated.

The hearings thus ceased.

III. Should the Committee Produce a Report

The immediate issue for the Committee, following the termination of hearings, was whether or not to produce a report. A subordinate issue was whether or not the parties or the Committee itself were free to make the report public.

On the immediate issue the President's position was that the Committee was *functus officio,* without further jurisdiction, by virtue of the Board of Governors' action in suspending the operation of Article 4. Therefore in his submission it could make no finding nor could it produce a report.

Professor Wheeldon's position was that since the President was unwilling to withdraw the charges against her then it was necessary that the Committee make a finding and a finding necessarily implied a report. Professor Wheeldon also submitted that once any proceeding had reached a certain stage of crystallisation and some fleshing out of the charges had occurred the matter could not simply be hoisted without either a withdrawal of charges to return parties to their first positions or a conclusion one way or the other. Since the Committee had held 25 days of hearings over five months and since about one-half of those days of hearings were devoted to evidence, Professor Wheeldon contended that the stage at which the matter might be hoisted had clearly passed. In this section we discuss the matter of a report. In a later section we consider the matter of a finding.

Professor Wheeldon also suggested that the Committee should produce a report on the basis that a great deal of time and effort had been devoted to procedural argument resulting in rulings by the Committee. Some of those rulings might be of assistance to subsequent hearing committees and should be preserved in the form of a report.

In addition to the two opposing arguments of the President and Professor Wheeldon, there is a third factor relevant to the report issue. There is a considerable amount of uncertainty over why these hearings were terminated and confusion over the ruling which caused the President to request a meeting of the Board of Governors who suspended Article 4. Furthermore

since the Board's decision there have been several public statements attributed to the President or to the Chairman of the Board of Governors which do not give the complete clarity that the Committee might have desired and which leave the Committee in a somewhat invidious position.

A press release attributed to the Chairman of the Board of Governors dated June 14, 1971 bearing the letterhead Simon Fraser University News Release reads:

> Mr. Richard E. Lester, Chairman of the Board of Governors of Simon Fraser University, today announced suspension of the University's dismissal procedures in the case of Prudence Wheeldon.
>
> Mr. Lester said that a procedural ruling, made late last week by the Committee hearing Mrs. Wheeldon's case, would have compromised the statutory separation of powers between the Board of Governors and the President and raised such contradictions that continuation was impossible.
>
> The effect of the Board's action, he said, would be to terminate the inquiry into cause for dismissal of Mrs. Wheeldon.
>
> Subsequent to the action of the Board of Governors, President Strand ended the suspension of Mrs. Wheeldon and reinstated her as a member of the teaching staff.
>
> President Strand and Board of Governors' Chairman R. E. Lester were both sharply critical of the dismissal policy, which is generally similar to those in effect but untested in other Canadian universities. Mr. Lester said that application of the procedures has tended to attract misinterpretation and prolonged, expensive and inequitable proceedings.
>
> President Strand said, "The University's dismissal procedures require a major reconsideration before any further hearings are held."

A letter sent to all faculty members of the University signed by the President dated June 18, 1971 reads:

> Last evening, I recommended to the Board of Governors that the dismissal procedures contained in the Statement on Academic Freedom and Tenure be cancelled. Over a two year period only one of three hearing committees, which it was possible to establish, actually heard evidence and made a recommendation to the President. Two other hearing committees made rulings inconsistent to the Statement on Academic Freedom and Tenure and the Universities Act. During the past eight months, committees to hear the cases of three other faculty members have not been set up because of the inability of the appointees to agree upon a chairman and the refusal to serve of three chairmen designated by the Chief Justice of the B.C. Supreme Court. Thus, unusual and unreasonable costs were incurred by the University in attempting to implement these procedures and implementation of a just and reasonable procedure to resolve the remaining dismissal cases proved impossible.
>
> Last week Mrs. Wheeldon was reinstated because the Committee hearing her case gave a ruling which jeopardized the integrity of any decision they might have made on the merits of the case. The effect of their ruling was that the University is a party to the hearing. Simply put, this means that the Board of Governors was made party to the hearing. Under the Universities Act, the Board is the body charged with ultimately making the final decision in contract questions. That conflict of interest was intolerable. Mrs. Wheeldon's renewal of contract is now being considered by the University Tenure Committee.

For two years there have been repeated and numerous attempts by outside bodies to intervene in the cases under consideration by the University. The obvious breakdown of these procedures and external pressures have polarized the University internally and generated enormous waste of both human and material resources. The atmosphere inside and outside the University with respect to the cases had become so highly charged that no decision by a hearing committee is likely to be seen to be just by all parties.

Over the last week, the internal procedures of contract renewal began to break down over the question of whether or not renewal decisions should be made for faculty members who were suspended. I sought consultation with the Faculty Association Executive. There were no alternatives to the dilemmas posed by these problems which would not have cost the University more in resources than in my judgment it could bear.

In the context of the breakdown of the internal procedures, a completely polarized environment, deep and abiding misinformation about the nature of the original cases, and two years of frustrated attempts to resolve these issues with existing procedures, I felt I had no choice but to recommend that the Board of Governors cancel the procedures. It was then incumbent upon me to make a decision with respect to the three faculty members under suspension facing dismissal charges. My judgment of this complex matter was that the best interest of the University would be served by a clear resolution of the remaining cases. I then recommended to the Board of Governors the discharge of S. Ahmad, M. Briemberg and L. Feldhammer. The Board of Governors approved these recommendations and the faculty members involved were informed on June 18, 1971.

There are bound to be reservations about the merits of my decision. My judgment was that this University had been torn by matters originating in 1969 for far too long. I have for too long been attempting to administer unworkable procedures. The University has spent excessive resources trying to ensure the integrity of these unworkable procedures and could not continue to do so. My obligations as stated in the Universities Act in absence of Section IV of the Academic Freedom and Tenure brief was to decide on the cases involved. I did that to the best of my ability.

These statements cause us to conclude that our deliberations have broader implications than the issue of whether or not there is cause for dismissal for Professor Wheeldon. These implications relate to the viability of the dismissal mechanism set out in academic freedom and tenure policies in numerous universities and the concept of academic freedom and tenure in the university community generally.

It is our personal conviction that the dismissal mechanism involving an impartial hearing committee can work effectively. Indeed it must be shown to work effectively if the academic community desires to defend the doctrine of academic freedom and tenure, and security of contract not capable of termination at the pleasure of a university administration. More narrowly there might be some value in recording our experience and procedural rulings for subsequent hearing committees who may be faced with similar procedural issues. Finally we believe that our ruling that the University was a party to the proceedings is quite consistent with SAFT and would not "jeopardize the integrity of any decision the Committee might have made on the merits".

For the above reasons we have concluded that it is advisable and necessary to produce a report. There is nothing in the Board of Governors' action in suspending the operation of Article 4 — even assuming unilateral action by one party signatory to the two party policy statement were appropriate — to preclude such a conclusion.

There remains the subordinate issue whether the report should be kept confidential. Here SAFT is silent. Article 4.1 (a) (vi) states that the hearings shall be held *in camera* and the evidence kept confidential. Article 4.1 (f) states that the President, to whom the Committee is to report its decision, is obliged to send a statement of the findings to the faculty member and that access to the transcript of the hearings must be provided to the faculty member if requested. SAFT does not say that the "statement of findings", "report" or "decision" shall be kept confidential.

It is arguable that the requirement for the hearings to be *in camera* and the evidence, confidential, by inference clothes the final product of the hearings with a veil of confidentiality. It is also arguable that the intention of requiring confidentiality for the hearings and the evidence was to assure witnesses that their communication would be treated as privileged and thus to ensure free and frank testimony. Consequently confidentiality dissolves in the final report provided witnesses cannot there be identified.

In this report the evidence that is directly treated would not appear to involve areas of undue sensitivity and, for the most part, is already in the public realm. At the conclusion of the hearings Professor Wheeldon waived to the Committee whatever confidentiality claims she might have on any report.

The President before the Hearing Committee did not categorically oppose the ultimate statement of findings being made public. His position was that he did not intend to make the Committee's statement of findings a public document unless Professor Wheeldon chose to make a part of the decision public. In that latter case the President indicated he would feel free to make the whole document public so that the matter could be reviewed in full context.

In view of our conclusions above that we believe there is a public good to be served by publication of this report we have concluded that the report need not be kept confidential.

IV. Important Elements in the Hearings

We set out here the more important issues before the Committee, an outline of the evidence and the various procedural rulings including the final ruling of who is a party to these proceedings, the culminating incident on which the hearings terminated.

1. *Preliminary Jurisdiction*

At the outset of the first hearing the parties gave affirmative responses to the following question:

> Do the parties agree that all steps preliminary to the hearing before the Hearing Committee as set out in the Simon Fraser University Academic Freedom and Tenure Statement have been exhausted and properly complied with, that the Hearing Committee is properly constituted and acceptable and the Hearing Committee has jurisdiction to hear this matter ?

2. *Procedure to be Followed*

The Committee met in executive session several weeks prior to the first hearing to establish consensus on a number of procedural matters. One such was the mechanical procedures to be followed at the hearing. Consequently, on the first hearing day, the parties agreed to the following arrangement:

> The University will state the issue before the Hearing Committee and the remedy requested. Professor Wheeldon will agree that that is the issue, or if not restate the issue. Professor Wheeldon will agree that the remedy requested is the appropriate remedy if the Hearing Committee should find in the University's favour or restate the remedy.
>
> The University will state in summary and outline form what evidence it proposes to call and the main principles of its submission or argument. Professor Wheeldon will state in summary or outline form the evidence she proposes to call and the main principles of her submission or argument.
>
> The University will submit a statement of facts agreed to Professor Wheeldon. Professor Wheeldon may make any comments necessary on that agreed statement of facts.
>
> The University will introduce documents and call witnesses to give testimony under oath or affirmation. Professor Wheeldon will have the opportunity to cross-examine each witness immediately after the witness has given his testimony in chief. If anything novel arises from the cross-examination then the University will have a right of re-direct examination and Professor Wheeldon will have a right of cross-examination on that re-direct examination. Professor Wheeldon will introduce documents and call witnesses who will give evidence under oath or affirmation with similar rights of cross-examination. The University will have the opportunity to call evidence in reply. If anything novel arises in that reply evidence then Professor Wheeldon will have the right to call rebuttal evidence directed to that reply evidence. Witnesses are only to be present while giving testimony and in view of the *in camera* nature of the hearings will be asked to agree that they not repeat outside the hearing anything arising within the hearing.
>
> On conclusion of the evidence the University will make its submission or argument based on the facts as presented. Professor Wheeldon will make her submission or argument on the facts as presented. The University, having the onus or burden of proving cause for dismissal, will have the final right to reply submission.

3. *Basic Terms of Reference*

The parties agreed in answer to the Committee's question that the Simon Fraser University Academic Freedom & Tenure Statement (SAFT) supplied the basic terms of reference for the matter before the Hearing Committee. Consequently the Committee looked to this document for guidance on the various procedural rulings it was asked to make.

4. *Interpretation of SAFT*

Early in the deliberations before the Hearing Committee the basic question of the Committee's interpretative powers over SAFT arose. The document is cryptically worded in a number of instances. There is no explicit reference in the document as to other sources that can be used for interpretative purposes. In the face of this the Committee gave the following ruling:

> In connection with SAFT where doubt arises as to the meaning of a provision because the provision has a patent or latent ambiguity the Committee has the power to rule and interpret and give the meaning to that provision. Secondly where the document is completely silent the Committee has power to rule and interpret to establish the procedures according to which the hearing will be conducted.

In the light of this ruling Counsel for the University put on record the following views. He asserted that under SAFT the President had the power to review the procedures of the Committee. If the President felt that the Committee had committed a grave procedural error he might request the Committee to reconsider the consequences that flowed from that procedural error. Counsel also asserted that should the Committee make a grave procedural error the President in his role as "safeguarder or custodian" of SAFT might feel unable to carry forward the decision of the Committee. Counsel for Professor Wheeldon registered his disagreement with that submission.

5. *Consequences of the Committee's Final Decision*

Early in the proceedings Counsel for Professor Wheeldon requested a ruling on an interpretative question to which the the first Hearing Committee involved in these matters had given consideration. Counsel for Professor Wheeldon submitted that in agreeing to the jurisdiction of this Committee both parties impliedly agreed to abide the result of the Committee's decision. Counsel for the University disagreed with that submission. The question put was whether the parties by agreeing to an adjudication, by agreeing to this Hearing Committee to be the adjudicator and by accepting the jurisdiction of this Hearing Committee thereby agreed to abide by the decision. The Committee concluded it did not have jurisdiction to answer this question and to make the declaration requested. Rather, it saw its jurisdiction and function as more limited to sit as a hearing committee to determine whether or not there was cause for dismissal, to hear evidence and submissions related thereto and to arrive at a decision and forward that decision to the President. The Committee ruled that its function ended when it had made that decision. What happened to the decision once made was not its function to consider. The ruling also contained the following addendum:

> If we are wrong in interpreting our jurisdiction in this limited way, and if we had jurisdiction, we would rule for the record and as an expression of our interpretation on the issue before us, that we interpret Article 4.1 (3) to mean that if we find no cause for dismissal the President will not recommend dismissal to the Board of Governors. More broadly, and again this is an expression of opinion, we believe that the Faculty Association and the Board of Governors by agreeing to SAFT agreed to process the decision (by a tribunal constituted in compliance with SAFT) in accordance with the results of the Committee's finding. As a personal position, no one of us would agree to sit on the Hearing Committee if we thought our decision would be accepted or rejected at the pleasure of the President or anyone else.

6. *Statement of Issues*

Counsel for the University submitted that there were two issues before the Hearing Committee: the truth of the stated grounds for dismissal and whether or not they were cause for dismissal in the opinion of the Committee.

The first ground for dismissal was that Professor Wheeldon failed to perform her contractual duties to teach her assigned scheduled courses. The second

and quite distinct ground was that Professor Wheeldon violated her duty to, and abused the trust of her students, by failing to provide the instruction in the courses for which they enrolled.

The two grounds were based on three "charges" lettered (a), (b), and (c). The charges were intended to be particulars and were relevant to both grounds, that is each charge was considered to support each ground. The first, (a), was that she was "on strike"; the second, (b), was that she failed to confirm that she would teach her regularly scheduled classes when so requested in a letter dated September 24, 1969, from Dean Sullivan and also failed to confirm that she was teaching or would teach her regularly scheduled classes when so requested in a letter dated September 30, 1969, from Dr. Srivastava, Acting Academic Vice-President; the third (c) was that she failed to teach her assigned scheduled courses, PSA 121 and PSA 376, during the period of September 24 to October 2, 1969. Counsel submitted that the appropriate remedy was the finding or declaration by the Committee, if it was satisfied by the submission made by the University that there was cause for dismissal of Professor Wheeldon.

Counsel for Professor Wheeldon submitted that in addition to the two stated issues there was a third distinct issue — whether Professor Wheeldon's actions were accounted for or justified by the behaviour of the University towards her. He indicated that the bulk of Professor Wheeldon's case would turn on the third issue. He submitted that the simple issue before the Committee was whether cause for dismissal was shown.

7. *University's Outline of Evidence and Submission*

The University outlined in summary form the evidence which it proposed to introduce and on which it based its case. Counsel indicated that the evidence would establish that in concert with certain of her colleagues in PSA, Professor Wheeldon went on strike on September 24, 1969, and as part of that strike, ceased to perform the essential functions she was contractually obliged to do, that is to teach certain classes. He also indicated there would be evidence on two collateral matters. The first was the alternatives that Professor Wheeldon had other than going on strike. The second was the effects of her action and, to an extent, the combined action of her and her colleagues. Counsel alleged that she was responsible and accountable for those things she herself did and the consequences that flowed from them. He also alleged that she bore a share of the collective responsibilities incurred by herself and her seven faculty colleagues who went on strike.

Counsel for both parties had agreed on a statement of facts or common ground prior to the hearing. This statement included 36 documents. Counsel for the University provided a more detailed outline of the evidence by reviewing and high-lighting that statement of facts. He referred to a document which outlined the four demands or statements of grievances that the group of eight professors, *inter alia*, had prior to the strike. They were:

1. An immediate end to the administration of the trusteeship of the PSA Department and the reinstatement of Professor Mordecai Briemberg as the already elected chairman;

2. The immediate rescinding of the recommendations made on tenure, promotions and renewals by the departmental tenure committee appointed by Dean Sullivan and subsequently by the University Tenure Committee;

3. The acceptance by the University of the recommendations on tenure, promotions and renewals put forward by the PSA Department's elected

tenure committee last May. This demand is made with renewed confidence in the light of decisions already made about other faculties and other departments with qualifications comparable to our own. This demand is also made in the light of reports of representative samples of our teaching now published in the Simon Fraser students' anti-calendar, reports which compare favourably with many other departments;

4. A fundamental recognition that at Simon Fraser University there will be decentralized experimentation among faculty and students in organizational and educational procedures and that such experimentation would be encouraged and not repressed.

These demands were first made on September 8, 1969. Counsel indicated that in roughly a week following the first appearance of these four demands various events took place which he alleged opened up alternatives to the PSA faculty to resolve the grievances short of the strike action they eventually did take. On September 16th there was a meeting of PSA students and faculty which passed a motion that PSA students and faculty endorsed the four demands and that they be forwarded to President Strand. The motion also stated that if the President did not accept or agree to negotiate the demands by noon, Monday, September 22nd, they would call a strike vote at a meeting to be held on September 22nd. Counsel indicated that this was the first formal appearance of the strike threat. In the week that followed there were a number of important written communications from the Canadian Association of University Teacher (C.A.U.T.). The first of these was a press release of September 19th by Professor Willard Allen, C.A.U.T. President, proposing:

(a) an external review committee to consider the relationship of PSA to the University,

(b) an external group of academics in similar fields to serve as an appeal body for renewal, promotion and tenure recommendations for eleven aggrieved PSA faculty, and

(c) suspension of the trusteeship.

He also proposed that appropriate bodies within the University review and make recommendations for:

(a) development of guidelines on departmental autonomy, and

(b) regulations governing academic appointments and terms of employment.

The second was a telegram dated September 21st from the C.A.U.T. Executive Secretary to Professor Briemberg which read:

C.A.U.T. cannot support PSA in 4 demands to SFU Admin. for complete autonomy that is complete dis-association from Policies and Procedures agreed upon by the majority of the University faculty. Therefore we will not support PSA if it adopts strike action. In pursuit of both demands we believe procedures external review and suspension of trusteeship as outlined in our press release of September 19th are proper basis for negotiation and should be supported by PSA.

The President responded to this C.A.U.T. initiative in a statement to the University community dated September 22, 1969 in which he:

(a) agreed to Professor Allen's proposal for an external committee to examine the PSA — University relationship, indicated he had requested

the C.A.U.T. and the Association of Universities and Colleges of Canada (A.U.C.C.) to attempt to form such a committee on September 15th and PSA had indicated unwillingness to co-operate with such a committee;

(b) indicated that an external appeal body for renewal, promotion and tenure recommendations for eleven PSA members would require reconsideration of *all* such recommendations in PSA and could not occur without a change in SAFT requiring negotiations between the Faculty Association and Board of Governors but that he would recommend the UTC use external academic consultants named through C.A.U.T. for review of individual cases, and

(c) indicated he would request the external committee first consider the trusteeship and make recommendations for its continuance or suspension.

The next event of major significance was a further general assembly meeting of students and faculty, including Professor Wheeldon, which passed a series of motions communicated to the President by Professor Briemberg in a telegram dated September 22nd. The motions read:

1. We welcome the indication from the C.A.U.T. in their telegram that they share our opposition to the trusteeship and dissatisfaction with the decisions made and procedures used by the departmental tenure committee appointed by the Dean or Arts, the UTC and the Board of Governors on tenure, promotion and renewal in the cases of eleven PSA teachers.

2. We welcome the C.A.U.T. President's oral proposal to Mordecai Briemberg that the administration and PSA should meet in direct negotiation.

3. We hereby elect a four member negotiating committee, two students (plus one alternate) and two faculty (plus one alternate) and declare our willingness to meet with an Administration negotiating committee provided that the meetings are open. The negotiating committee will report regularly back to this body for the final decision on any negotiated settlement.

4. We declare our willingness to consider the three C.A.U.T. proposals in the direct negotiations about the issues involved in the four demands. A principle of these negotiations must be that all proposals bearing upon or relevant to the resolution of the conflict between the Administration and the PSA Department will be given full consideration.

5. We wish to indicate yet again very clearly that if a negotiated settlement is not achieved it will be because of the Administration's complete unwillingness to negotiate under what are the broadest possible terms. We therefore declare that we will give the Administration until Wednesday 24 September, 1969 at 12:30, to reply to the above proposals.

If the administration does not show its willingness to engage in open and direct negotiations, as specified above, by appointing an Administration negotiating committee by this Wednesday at 12:30, a PSA strike and Teach-in on democratizing SFU will begin at that time.

The President of C.A.U.T. sent a telegram to all individual faculty members of PSA dated September 23, 1969 which read:

PSA resolution on and threat of strike action is completely unacceptable. If you do not immediately notify me of your renunciation of strike

action I have no alternative but to recommend immediately to C.A.U.T. bodies that neither your personal case nor the departmental case be supported by C.A.U.T. in any way.

The President of the C.A.U.T. also sent a telegram to the President of the SFU Faculty Association for release on campus which read:

C.A.U.T. was asked by a number of faculty members in SFU's PSA Department to act on their behalf in seeking solutions to the disputes and problems which have arisen between them and the University. It was also asked by President Strand to cooperate in setting up an outside review committee for the PSA Department. While our investigations and discussions were in progress the possibility of a hard confrontation developed into a major probability late last week. In an effort to prevent such an event the President of C.A.U.T., Professor Willard Allen, issued a statement last Friday asking for restraint and proposing a number of steps which might lead to an acceptable solution.

At the same time both parties were privately urged to agree to negotiation, and the PSA faculty was specifically warned that the C.A.U.T. regarded their threat of strike action as unacceptable and improper. If strike action is ever justifiable it is certainly not while recognized channels of discussion, negotiation, or appeal are still open. On September 21, a telegram warning that this strike action might jeopardize C.A.U.T.'s willingness to act on behalf of PSA members was sent to Professor Briemberg, spokesman for the PSA group.

It should be perfectly clear that Professor Allen's statement in C.A.U.T.'s actions did not make judgments on the basic disputes involved and that no such judgments could be made until more complete information was available.

Both parties have now responded.

Professor Strand issued a statement on Monday which, whatever its limitation, did leave the way open for further discussion. The PSA Department in response, laid down precise, and in some ways objectionable terms which they demanded to be accepted by the University by Wednesday noon, under threat of strike action.

Professor Allen has called for the immediate retraction of the strike plans and has stated that failing this he will recommend immediately to the C.A.U.T. a complete withdrawal of any form of support for PSA faculty who participate in any way.

Freedom of any kind and academic freedom especially requires an acceptance of the time-consuming processes of discussion, debate, and negotiation, none of which is possible in the emotion-laden atmosphere of confrontation and strike.

On September 24, 1969 at 12:30 p.m. the strike in fact began. The strike was formally declared ended by the strikers on November 4, 1969. Professor Wheeldon's duty to teach ceased at noon on October 3, 1969. On that date President Strand sent her a registered letter suspending her with the following notification of suspension and statement of reasons:

Mrs. P. Wheeldon:

Acting under Section 58(1) of the Universities Act, I have today suspended you as a member of the faculty of Simon Fraser University

effective 12 noon Friday, October 3rd, 1969. Attached to this notice is a copy of my Statement of Reasons. Your suspension will remain in effect until the conclusion of dismissal proceedings or such earlier time as I may deem appropriate.

During this suspension you shall continue to receive your salary, you shall remain entitled to your welfare benefits and you shall be allowed the use of your office and the library for your research. You are suspended from your teaching duties and committee assignments. Your voting privileges in any decision-making body in the University are suspended. You are cautioned not to engage in any activity that causes or may cause a disruption of the normal activities of this University.

The Universities Act provides you with the right to appeal the suspension to the Board of Governors.

SUSPENSION OF MRS. P. WHEELDON: STATEMENT OF REASONS

Since the commencement of the 1969 Fall semester there has been continual open and general discussion of a "strike" by a group of faculty and students in the Political Science, Sociology and Anthropology Department. On Monday, September 22nd, this group voted to "strike" commencing September 24th at 12:30 p.m. The students enrolled in PSA courses have been confused and frustrated as to whether their courses will continue, whether they will get grades and credits, and whether their requirements for degrees, scholarships and bursaries can be met.

On September 24, 1969, Dean Sullivan wrote to Mrs. Wheeldon asking her to state in writing whether she would or would not be teaching her regularly scheduled classes, and provided her with a copy of my letter of the same date which warned that any member of the teaching staff who does not teach his regularly scheduled classes or who otherwise withdraws his services would be violating his contract of employment with the University.

On September 30, 1969, Dr. L. M. Srivastava, Acting Vice-President, Academic, wrote to Mrs. Wheeldon asking her to state clearly and unequivocally whether she was meeting her regularly scheduled classes at the specified times and places, whether she was teaching the subject matter described in the calendar and approved by Senate, and whether she planned to continue to do so. Dr. Srivastava asked for a written answer by 5:00 p.m., Wednesday, October 1, 1969, and warned that in case of a negative response or a failure to respond it was his intention to recommend to the President that Mrs. Wheeldon be suspended and dismissal procedures be initiated. Two copies of the letter were sent, one to Mrs. Wheeldon at the PSA Department, the other by registered, special delivery mail to her home.

In response to his letter, Dr. Srivastava received a statement signed by Dr. Aberle and Mr. Briemberg and two students, which contained a motion adopted by the PSA Student-Faculty Joint Assembly at their meeting of September 30:

> "The PSA Student-Faculty Joint Assembly expresses its disgust with the Simon Fraser Administration's bad faith and violation of its own procedures in relation to the PSA Department over the past three months. In answer to your letter of September 30th, 1969 to PSA Faculty, we wish to remind you that the PSA Department has, by majority decision of this assembly, been on strike since 12:30 p.m. September 24th. Teachers and students are fully apprised of the situation."

On that same day, September 30th, Dean Sullivan received the same reply to his letter of September 24th.

Dr. Srivastava has also informed me that numerous students have been forced to seek transfer from the PSA courses not being given. Several of these students have stated that they wish to transfer from Mrs. Wheeldon's courses because she is not teaching her regularly scheduled classes. A check on her classrooms has shown that she has not been meeting her classes at the scheduled times and places.

In the judgment of the Academic Vice-President these acts of Mrs. Wheeldon constitute an immediate and serious threat to the obligation of the University to provide instruction to the students enrolled in the courses she was scheduled to teach this semester. He has recommended to me that Mrs. Wheeldon be suspended and that dismissal procedures be initiated.

I have reviewed this matter with the Academic Vice-President and I concur with his judgment concerning the threat to the functioning of the University and the academic programs of the students involved. Accordingly, I am suspending Mrs. Wheeldon for the following reasons:

1. She has asserted that she is "on strike" and has failed to teach her assigned courses as described in the calendar and approved by Senate, at the regularly scheduled times and places.

2. Upon request, she has failed to confirm specifically that she will teach her regularly scheduled classes.

3. She has abused the trust of the students who enrolled and paid for instruction in her courses and who now find their programs of studies disrupted and thwarted by her actions at a time in this semester when course rescheduling is particularly difficult and when it may prove impossible to provide instruction in these courses.

K. Strand
President

The parties agreed that the two letters referred to above from Dean Sullivan and Vice-President Srivastava were received by Professor Wheeldon and that the September 30th motion sent to Dr. Srivastava was sent on her behalf.

Counsel for the University outlined the events that followed Professor Wheeldon's suspension. The University took various steps to deal with the consequences to students of the strike. These consisted of cancelling a number of courses that had been struck by the professors, making arrangements for new courses for some students to transfer into and for tuition fee refunds for others and, in a more limited number of cases, making special exceptions to requirements for graduating students. Counsel also indicated that evidence would be adduced as to the facts of the strike on campus, in particular the picketing of some classes. He pointed out that Professor Wheeldon did not engage in any picketing. He indicated however that other strikers, both faculty and students, did picket classes and did disrupt regular activities on campus to the extent that on October 22nd the University obtained a temporary injunction forbidding picketing and disrupting on campus directed to named persons, both faculty and students, and also against all others who might be tempted to engage in the same behaviour.

Following Professor Wheeldon's suspension on October 3rd there was a meeting on October 9th between Professor Wheeldon and six of her col-

leagues on the one hand and the trusteeship committee of the PSA Department on the other hand with no conclusive results and with considerable confusion as to whether it constituted a meeting between a faculty member and department head to discuss the dismissal action. On October 17, 1969, the President gave Professor Wheeldon formal notice of the initiation of formal dismissal procedures against her by registered letter stating the two "grounds for dismissal for cause" and "three charges" specified above.

Counsel for the University suggested that the following principles applied to the evidence. The two grounds stated in the dismissal procedures were the basis of the major submission. The first ground dealt with Professor Wheeldon's contractual duties. He submitted that Professor Wheeldon wilfully violated her most fundamental contractual obligation to the University, i.e. to teach assigned scheduled courses. That breach of contractual duty was completely sufficient justification for her dismissal. It would be appropriate for the Committee to find cause for dismissal on that basis alone.

He indicated that the principle underlying the second ground was somewhat less easy to particularize since it did not turn on Professor Wheeldon's contractual duty. Here he submitted that a feature of being a faculty member of the University, of at least equal importance to the contractual duty, was the ethical obligation owed to students. Some documentary support for that proposition derived from SAFT, in particular Article 1.4(a) which read:

> The faculty member's responsibilities include, to his students, to foster the pursuit and dissemination of knowledge and encourage the understanding and independence and originality of thought. He avoids any exploitation of students for private advantage, does not abuse the trust placed in him by students, acknowledges assistance from them, and honours individual commitments made to individual students.

Counsel submitted that Professor Wheeldon's action in September and October 1969 abused the trust placed in her by students and entirely aside from any violation of contractual duty to the University, it would justify her dismissal from a teaching post at any university. In this area of ethical responsibility Counsel attached most importance to the alternatives in front of Professor Wheeldon that would not have involved such drastic consequence to her students.

Counsel anticipated that as to her legal duties, Professor Wheeldon would advance the position that she could be justified in breaching her fundamental duties. He submitted that the only possible justification for such fundamental breach of a service contract would be physical danger to life or limb. He did not anticipate any evidence that could suggest such danger. Consequently he submitted that the law was quite clear that any possible justification that Professor Wheeldon might offer would not be sufficient in law to excuse her.

8. *Professor Wheeldon's Reply to University's Outline of Submission*

Counsel for Professor Wheeldon made a three point reply to the University's outline.

First, regarding the contractual obligation he submitted that the outline failed to give any indication of what the contractual obligations were, what terms constituted the contract and what terms were alleged to have been broken. This was followed by a request for more particulars.

Second, he suggested that if the University succeeded in demonstrating a breach of contract Professor Wheeldon would make submissions concerning

the nature of that breach, the seriousness of the breach and whether in law that breach was sufficient to give rise to the right to dismiss.

Third, Professor Wheeldon would make submissions on the circumstances existing at the time of the strike to establish that if there was a breach the seriousness of the condition at SFU qualified the nature of that breach so as to preclude it from being sufficient cause for dismissal.

By way of reply the University submitted the following particulars of the contract in issue. It alleged that Professor Wheeldon had had an employment contract with the University which originated in 1967, that her fundamental obligation under that contract was to teach at the University, that what she was to teach was designated from time to time in the appropriate manner and that at the time in question, September and October of 1969, her duties were specifically to teach two courses, PSA 121 and 376. In support the University indicated it would produce a sworn statement of Professor Wheeldon that she agreed to teach these courses and that her contract included this obligation to teach courses not specified in detail at the time the contract was entered into. The consideration for the contract was salary to be paid. The way of implementing the contractual term to teach courses was discussion with the Department head and arriving at a designation of particular courses and instructors. In fact she had agreed with the University Administration that she would be responsible for the courses already specified.

Counsel for Professor Wheeldon reiterated his request for a statement of the relevant terms of the contract, and submitted that the University had not sufficiently proved the contract and the obligations to teach certain courses becoming part of it. Counsel contended that an administrative arrangement did not necessarily result in a contractual obligation.

By way of reply to the second ground stated by the University, Counsel for Professor Wheeldon contended that it could not stand if it was not alleged to constitute a breach of contractual duties. He submitted that the relationship between Professor Wheeldon's employer and herself was one of contract. If one party to a contract was alleged to have perpetrated a misdeed of some sort then the other party to the contract might have various rights depending on the legal nature of the alleged misdeed. If the alleged misdeed was not a breach of contract at all then it followed that the innocent party to the contract could take no action on the contract. If on the other hand the alleged misdeed was in fact what the law regards as sufficiently serious a breach then that gave the innocent party the right to rescind or terminate the contract. In addition to these two situations here was a third situation in which the misdeed was a breach of contract but a breach of an insufficient nature to give rise to the right to rescind or terminate the contract. However whatever the nature or the seriousness of the misdeed the only impact which it could have on the rights of the innocent party was a contractual impact. The sum total of the obligations owed by one party to a contract to another ought to be found in the contract where it would be anticipated that a breach of those obligations would have a contractual effect on the rights of the innocent party. He conceded there might be obligations existing between a professor and a university other than contractual, i.e. ethical obligations. However such extra-contractual obligations could not in law have a contractual effect. The source of obligations which could have a contractual effect was the contractual relationship. "Abuse the trust of students" was a phrase arising in Article 1.4 (a) of SAFT. It did not follow that because a particular matter was listed as a faculty responsibility in SAFT that a breach of the responsibility by the faculty member constituted a

breach of the faculty member's contract of employment. To dismiss a faculty member for a reason contained in SAFT, a reason which had not been shown to be part of the faculty member's contract of employment, would constitute a breach of contract to the faculty member. He submitted that the statement by the University that the abuse of trust was not a contractual reference or contractual statement had the effect as a matter of law of rendering it impossible for the Committee to hold that, if proved, it constituted grounds for dismissal.

As a second submission to the second ground, Counsel for Professor Wheeldon stated that the words "abuse the trust of students" suggested some sort of trust as owed by faculty members to students. The precise nature of the trust was not specified. In law there was no relationship of a fiduciary nature existing between the university teacher and his or her students. If there were such a relationship the proper plaintiff for any action to remove a professor for alleged breach of trust would be the students. The University could only be an appropriate party to such an act for breach of trust or breach of fiduciary obligation if it were also a breach of the contract which in the University's admission it was not.

The University replied that if Counsel for Professor Wheeldon preferred to tie the grounds or points to a contractual analysis then ground two could be summarized as misconduct. Rather than the "abuse of trust" turning on the violation of any particular term of a contract the employer's justification for dismissing its employee would turn on the implicit term that the employee would not engage in this conduct. In reply to the contention that it was not possible for students to secure the removal from employment of a professor he maintained that universities exist to educate students and therefore it was appropriate for the University to act on such an abuse.

Counsel for Professor Wheeldon contended that it was not sufficient to refer to blanket terms such as misconduct. He submitted that the responsibility of a party who claimed the rights to terminate a contract was to demonstrate the obligations of the contract which in his view were broken. Finally either the duty not to abuse the trust of students was contractual or it was not.

9. *Professor Wheeldon's Outline of Evidence re Justification*

Counsel for Professor Wheeldon indicated that her evidence would show the causes of the strike, that at the time of the strike a very tense crisis situation prevailed, and that the strike was a last resort in an act of desperation. That evidence would relate to four different time periods as follows:

(a) *Events leading up to and the imposition of the trusteeship*

In February, 1968, the C.A.U.T. issued a report concerning a state of affairs at SFU and censured the University. In response joint faculty met and passed some important resolutions, the deciding tenor of which was that there would be a process of decentralization within the internal organization of the University and that student participation in decision-making processes should be accepted in principle. In response to that declaration of intent PSA began to restructure its own internal organization. One result was that the DTC was democratically arrived at. Composition of this committee was first objected to in February, 1969 by the UTC. PSA took strong exception to these objections. At and just after the first objection there occurred a series of provocative instances which Counsel alleged amounted to harrassment of members of PSA, e.g. unjustified allegations of unethical conduct by one named faculty member in PSA, a baseless charge concerning handling of

departmental monies and a provocative accusation that the Department had issued instructions in violation of University policy. A further series of objections to the DTC issued forth, this time involving the role of student parity. Then the Dean of Arts refused to recognize the duly appointed chairman of the Department. The Dean maintained that he was administratively incompetent but, Counsel alleged, did not substantiate this charge. The Dean made it clear that he would only accept as chairman someone who was acceptable to himself and if this was not done a trusteeship was threatened. No chairman matching the qualifications prescribed by the Dean took office with the consequence that a trusteeship, contrary to the wishes of almost all of the members of the PSA, was appointed. This was distressing and, Counsel alleged, could only have the appearance of a deliberate escalation of the dispute.

(b) *Events leading up to and the decisions reached on renewal, promotion and tenure*

On August 7, 1969, the Dean under the authority of a recent amendment of SAFT appointed a DTC in substitution for the Department's own committee, with only one social scientist. That Committee reached its decisions with great haste and forwarded them to the Dean and the UTC. Three or four days after the UTC received these recommendations it made its own decisions and forwarded them to the Board. The Board had to act before August 27th or extend for another year contracts which would otherwise terminate. Counsel alleged that serious procedural violations occurred in this decision-making. The effect of the decisions would have made it possible to remove by summer, 1970 virtually all those members of PSA engaged in the dispute.

(c) *Events leading up to and the occurrence of the strike*

During the time of the dispute members of PSA were communicating with C.A.U.T. indicating concern for a worsening situation. The President proposed an external examining committee and called on the C.A.U.T. and AUCC to nominate members. C.A.U.T. expressed concern for the terms of reference, insisted the Trusteeship be lifted and a committee review the tenure, promotion and renewal decisions. The SFU Faculty Association insisted it was the appropriate body to hear such appeals. PSA members agreed to divide functions — e.g. two members to test the appeal procedures, two members to appeal to the C.A.U.T., etc. Aggrieved members tried to negotiate with the President but, Counsel alleged, he refused. The strike was called and put into operation. Professor Wheeldon did not picket, was available in her office to students and before the strike students were warned so they could enroll in alternative courses. The harmful consequences of the strike, Counsel suggested, were substantially caused by the Administration's response e.g. suspension of the strikers was one of the principal causes of inconvenience.

(d) *Some events happening after the strike*

Counsel alleged that certain events happening after the strike showed that PSA aggrieved members were justified in concluding all alternatives to strike had been exhausted. For example the Executive Committee of the Faculty Association decided C.A.U.T. should handle appeals on contract decisions. Also Professor Wheeldon was asked by Professor Somjee, Chairman of the PSA Graduate Committee, to supervise academic work. This she agreed to do and her response was rejected.

10. *Ruling on Motion to Strike : Ground Two*

Following the respective outlines of evidence and submission Counsel for Professor Wheeldon moved that ground two of the stated grounds for dismissal be struck off. He submitted the Committee should sever off the second ground as not within its jurisdiction if not related to the contract and a breach thereof. The Committee replied that it was not prepared to make that ruling or decision at that time in the absence of further legal argument on the point and further factual evidence related to both grounds. The Committee indicated it desired to hear further argument on the issue later in the hearings.

11. *Professor Wheeldon's Request for List of Documents*

Counsel for Professor Wheeldon requested that he be given a list of all documents relating to the operation of the Trusteeship imposed on PSA, to the deliberations of the specially appointed DTC and of the UTC during the summer of 1969. There was also a request for a list of documents relating to the deliberations of the UTC on two cases in late 1969 culminating in January 1970. With respect to the Trusteeship, the request was for a list of documents relating to its establishment and operation, written records and minutes and any communication between it and other bodies or persons from PSA. With respect to the special DTC and the UTC, the request was for a list of the documents or documentary material considered by those bodies in coming to their decisions with respect to Professor Wheeldon and to other members of PSA where relevant or where they would have implications to any member of PSA.

The Committee ruled that the list was relevant insofar as it involved documents from the time of establishment of the Trusteeship until the end of the "strike" but that the list of documents subsequent thereto, specifically in January, 1970, was not relevant.

Before making this ruling the Committee called for extensive testimony from Professor Wheeldon. This established to the Committee's satisfaction that there was some foundation in fact and belief to which the list of documents had further relevance. The analytical reasoning underlying the Committee's relevance ruling was this. Article 4.1 d(iv) of SAFT stated "Only the grounds for dismissal and evidence relevant thereto shall be considered by the Hearing Committee". In the absence of any further guidance on the parameters for "relevant evidence" the Committee believed the most appropriate framework for guidance was the court rules applicable in civil (as opposed to criminal) proceedings. The leading textual authority in Canada is Williston and Rolls, *The Law of Civil Procedure.*[8] In discussing the customary legal process known as "discovery before trial" (the right to interrogate a party adverse in interest prior to trial and the right to obtain disclosure of documents which are or have been in the possession of a party, *inter alia*), the authors quote Rule 347 of the Ontario Supreme Court which reads:

> Each party, after the defence is delivered or an issue has been filed, may by notice require the other within ten days to make discovery on oath of the documents that are or have been in his possession or power relating to any matters in question in the action, and to produce and deposit them with the proper officer...

The test of relevance in this rule is "documents... relating to any matters in question". The authors refer to the dictum of Brett L. J. in *Compagnie*

8. Butterworths, Toronto, 1970.

Financière du Pacifique v. Peruvian Guano Co. ((1882), 11 Q.B.D. 55, at p. 62) as the classic definition of this test and quote that dictum as follows:

> What are the documents which are documents relating to any matter in question in the action ? In *Jones v. Monte Video Gas. Co.*, 5 Q.B.D. 556, the Court stated its desire to make the rule as to the affidavit of documents as elastic as was possible. And I think that that is the view of the Court both as to the sources from which the information can be derived, and as to the nature of the documents. We desire to make the rule as large as we can with due regard to propriety; and therefore I desire to give as large an interpretation as I can to the words of the rule, 'a document relating to any matter in question in the action'. I think it obvious from the use of these terms that the documents to be produced are not confined to those, which would be evidence either to prove or disprove any matter in question in the action; and the practice with regard to insurance cases shows that the Court never thought that the person making the affidavit would satisfy the duty imposed upon him by merely setting out such documents, as would be evidence to support or defeat any issue in this cause.
>
> The doctrine seems to go farther than that and to go as far as the principle which I am about to lay down. It seems to me that every documents relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which *may* — not which *must* — either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary. I have put in the words 'either directly or indirectly', because, as it seems to me, a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of inquiry, which may have either of two consequences (underlining added).

The authors supplemented this quote by a reference to Blackburn J. in *Hutchinson v. Glover* [9] who said:

> Everything which will throw light on the case is *prima facie* subject to inspection.

The Committee adopted these principles as applicable here but recorded certain cautions pertaining to the relevance ruling as follows:

> First, at this time it is only a list called for, not the documents themselves. Second, there is an important distinction in law between the discovery of a list of documents, on the one hand, and the actual introduction in evidence of those documents, or part of their contents, as admissible evidence, on the other hand. Third, and perhaps more practically, we desire at this time to refrain from making any finding of fact, and therefore we have concluded that an expansive approach to the documents generally related to matters in issue is an appropriate approach. We are satisfied that a case has been put by Professor Wheeldon, that the establishment and operation of the Trusteeship, the establishment, operations and decisions of the special DTC, and the decisions of the UTC, affecting PSA, are indeed related to the matter of her dismissal, and the matters of the reasons for actions taken by members of PSA, leading up to the strike and the strike itself. In that

9. (1875), 1 Q.B.D. 138, at p. 141.

connection, we might point out that it is alleged that Professor Wheeldon has some responsibility for the consequences of the strike. On the other hand, we are not satisfied at this time, that the decisions of the UTC in the time period January 1970, are so related to these matters, and we rule against the request for now. It may be that subsequent evidence will establish a relationship to decisions of the UTC, sometime after the strike, and if it appears to Counsel for Professor Wheeldon that this is so, at some later time, we would certainly entertain his request for that list.

Following this general relevance ruling there followed a series of more specific relevance rulings touching on documents in the possession of certain committees or persons. In giving these rulings the Committee issued the following interpretation of its role:

(a) *Committee Seeking Evidence or Calling Witnesses*

We believe the Committee is constituted to hear evidence placed before us. Generally speaking the evidence should be placed before us by either party. We are reluctant to become involved in directly seeking evidence ourselves. Unless and until we hear argument on the matter it is our preference that any request of any kind for evidence go through Counsel who is going to present that material to us.

(b) *Request for a List of Documents from the University Tenure Committee*

Counsel for Professor Wheeldon requested a list of documents in the possession of the UTC. In response to that request the Hearing Committee ruled that a *list* of the documents or documentary material considered by the UTC in coming to any decision with respect to Professor Wheeldon and generally to other members of the PSA Department where they would have implications for any member of PSA, was relevant to the issues to be considered by the Hearing Committee. The time period covered by this list was the summer and fall of 1969. The Committee recorded several points of amplification on this ruling:

First, the proceedings of this Hearing Committee are confidential and anyone who is shown this ruling by Counsel [on the consent of the Committee and opposing Counsel] should respect its confidentiality. Second, the Hearing Committee has made no ruling as yet as to the disposition of the final transcript of its proceedings. Even if the ultimate decision with respect to the final transcript were to permit either or both parties to release it, the Hearing Committee could give assurance to the UTC that any reference to a list of documents prepared by the UTC could be deleted from the released transcript.

In arriving at the ruling requesting a list of documents from the UTC, the Hearing Committee recognized that the essence of the UTC's considerations and deliberations is such that normally they must be in strict confidence. However in the proceedings before this Hearing Committee suggestions of procedural and substantive impropriety relating to the UTC have been raised. In attempting to balance the claim of complete confidentiality on the part of the UTC and the importance of the issues before this Hearing Committee we have concluded that the standard rule of strict confidentiality of the UTC should be relaxed to permit a list of documents to be given to the Hearing Committee.

It is important to distinguish, at this point, the preparation of a list of documents from the actual production or release of those documents and

their full contents. Our ruling, at this time, does not relate to the latter of these two points. Furthermore some of the documents which might form part of such list may be privileged at their source or origin, such as confidential letters of reference. If the UTC were concerned about a breach of the confidentiality or privilege at source, then it might feel it appropriate to designate in the list that there are such letters or documents and to indicate the number of them.

Counsel for both parties were released from their confidentiality undertaking to communicate the Committee's ruling to the UTC. That body replied that it was unwilling to produce such a list in the absence of further particulars. Accordingly the Committee amplified its relevance ruling and Counsel conveyed the following addendum to the UTC:

> A list of documents currently or previously in the possession, custody or control of the UTC, giving sufficient particulars so as to identify said documents, and relating to the following matters.
>
> 1. Consideration given by the UTC, or any member thereof, to the application for tenure of the following persons: Professors Aberle, Leggett, Rush, Potter, Somjee and Bettison;
>
> 2. Proposals concerning the PSA DTC, whether made by members of that department or other persons, including any document relating to the so-called "Briemberg Compromise" of August 1969;
>
> 3. All procedural rulings, criteria of decision-making, methods of decision-making, methods of operation and procedures, considered or adopted by the UTC, for use either generally or specifically in the case of members of the PSA department;
>
> 4. All records and minutes of meetings discussions and opinions relating to any of the above;
>
> All of which is requested for the period beginning with the time of formation of the UTC and ending on September 30th, 1969.

(c) *Ruling Re Statistical Information from the Dean of Arts Relating to Renewal Tenure and Promotion Decisions in Various Departments within that Faculty*

Counsel for Professor Wheeldon requested statistical information from the Dean of Arts which would indicate the norms in the Faculty on a department by department basis for renewal, promotion and tenure decisions. The Committee ruled that the statistical averages and information requested did have some relevance. In giving this ruling the Committee discussed several of the points raised in argument before the ruling:

> The first one was that this was not information that was known at the time, or existed at the time, that the strike action or alleged strike action took place on the part of the members of the PSA department who were involved. It is our opinion that the allegation by Professor Wheeldon, that there was unusual treatment of some members of the PSA department vis à vis the other departments, was a basis, or at least an alleged basis for the belief that a strike was justified. It is already on the record that there were certainly rumours to that effect and certainly a belief on the part of the members of the PSA department who did take this action, that their treatment vis à vis the other departments in terms of DTC decisions was unusual.

The second objection was that there is no value in that statistical average because it is not the question to be decided by this Committee. It is our belief that it is broadly relevant to this question of whether there was abnormal treatment of certain members of the PSA department in the absence of other factors to explain (and we have had allegations that there was abnormal treatment) and that such abnormal treatment was a factor leading these members to believe that strike action was justified. In that connection we believe that there may be some value in a statistical average.

The third point is that the value is not sufficiently high to warrant the work involved. It is a difficult matter to decide, weighing the two competing claims, and perhaps we do not have a full understanding of the administrative burden that would be imposed, but it is our present belief that there is sufficient value in this information to justify some administrative burden.

In making the ruling, we would like to be careful to limit it properly. The request is cast in terms of four categories.

(a) Statistical information relating to the rank of people in the Faculty of Arts before consideration by the appropriate departmental tenure committee in 1969, the degree held at that time, and the recommendations made about that person by the DTC, which would include any period of renewal, stating the period of renewal or any non-renewal.

(b) Any recommendation of promotion or tenure,

(c) Any statement of contingency or dependency with respect to the recommendation, and

(d) The period for which that person had already been a faculty member of this University.

The request is only for statistics and not for any names. It is only for DTC decisions for departments within the Faculty of Arts. Departments will be broken down with labels such as A, B, C etc. rather than the normally understood title for the department. We gave some thought to additional mechanisms which might mask or hide the identity of individuals in the case of a small number of people in a particular department but we chose to leave that to the discretion of those preparing the information. Finally, should this information be introduced by means of an analogy to discovery of documents or by cross-examination of Dean Sullivan ? It is not our present intention to give any ruling or decision on that matter. We would prefer to leave it to the parties to work out. If it is necessary to consider the means or the mechanics, then we would invite both Counsel to direct that question to us and we will give our decision.

(d) *Request for a Ruling on the Relevance of Documents Involving Correspondence between Members of PSA other than Professor Wheeldon, and the C.A.U.T.*

Counsel for Professor Wheeldon sought to introduce documents which included correspondence between members of PSA other than Professor Wheeldon and the C.A.U.T. Counsel for the University objected on the basis that these documents were not relevant. The Committee overruled the objection on the following two grounds:

First, they seemed to demonstrate something of the history of complaints and alleged grievances and indicated that they were not complaints or grievances that developed very quickly or as a flash in the pan. Second, much of the correspondence does involve attempts to place these complaints before the C.A.U.T. We have already had some indication from the University that the C.A.U.T. was believed by some people to be a viable alternative to the strike action that was ultimately taken.

12. *Ruling that the University is a Party to these Proceedings*

Finally, we came to a series of rulings issued over several days of hearings centering on the position that the University was a party to these proceedings. Since it was at this juncture that the hearings foundered we set out the particular rulings *verbatim* from the transcript without editorial comment.

(a) *The Initial Ruling*

The question we have been asked to rule on is whether Simon Fraser University is a party to these proceedings. We conclude it is. This conclusion does not prejudge the question of whether or not the President of the University is also a party.

We arrive at this conclusion by examining the basic question this Hearing Committee was called into being to determine, i.e. is there cause for dismissal. This essentially poses the issue of whether or not the employment relationship between Simon Fraser University and Professor Wheeldon should be terminated for cause. It follows that the contractual party seeking to end that relationship, Simon Fraser University, is one of the parties to these proceedings.

We have examined the Academic Freedom and Tenure Statement carefully for assistance in answering this question. While it designates three officers of the University who may initiate charges, requires the originator of the charges to be present, and specifies the rights of parties to be represented by Counsel and to cross-examine witnesses, it does not designate who the parties are.

Mr. Leask has submitted that the establishment of this Hearing Committee and these proceedings are one of the internal procedures which the President uses to assist in determining whether he should recommend dismissal to the Board of Governors and since this is a proceeding internal to the University and a condition precedent to the President taking any further action on formal dismissal it follows that he as the initiator of this mechanism and originator of the charge must be one party and Professor Wheeldon the other to the proceedings before this Committee. Professor Carr and Field have submitted that the President's actions have been taken in his capacity as chief executive officer of the University and it follows that the University is the principal behind his actions and is therefore a party. These diverse positions cause us to return to the basic function the Academic Freedom and Tenure Statement prescribes for us, to make a finding as to whether or not there is cause for dismissal and to ground our ruling in that function.

We are cognizant that this ruling may be seen to have implications on the relationship to one another of various agents, organs and committees within the University community which derive their existence and function from the Academic Freedom and Tenure Statement. That Statement posits a separation of powers and responsibilities of some of those agents,

organs and committees. This ruling does not purport to destroy or deny that separation.

(b) *Request for Production of Documents from the UTC and the DTC*

We have been requested to rule that as a consequence of the University being a party to these proceedings, the University through its chief executive officer, the President, can require the production of documents from the UTC and the DTC. Our conclusion on the basis of the language of SAFT and present argument based on that language is that it cannot require such production where SAFT prescribes a separate and independent function for the UTC and DTC and documents are in the exclusive possession of the UTC and DTC.

(c) *Ruling on Request for Production of Documents — Letters by President Strand to the A.U.C.C. and the C.A.U.T.*

First, Counsel for Professor Wheeldon requested copies of letters by President Strand to the A.U.C.C. and C.A.U.T. We are prepared to rule, subject to any claims of privilege, that they are relevant to a line of inquiry, provided that (and you will appreciate here that we are anticipating somewhat to try and assist) they fall in the time period already set out in our earlier relevance ruling and relate to the Trusteeship over PSA, the strike, or the suspension of PSA faculty members arising from the strike.

The second point and more generally is that we conclude we have no power, on the basis of present argument, to order documents from any body or any persons. Our position is that our function is, among other things, to make rulings of relevance regarding documents and to consider documents brought before us by the parties.

The third point, on the matter of whether or not documents are in the sole power of the parties to these proceedings, and we might include the originator of the charges in these proceedings, our conclusion is this, subject to any claims of privilege, and possible further argument in a more specific direction. Documents of committees or persons whose functions derive from SAFT are not in the sole power of the University or the President. We appreciate that that probably leaves open the question of the Trusteeship and we do not deal with that directly in these rulings.

Our fourth and last point is that on the matter of inviting people to come along and explain any resistance they might have to producing documents, we would be happy to permit Counsel to invite them, but we do not wish to take the initiative in doing so ourselves.

(d) *Ruling on a Request for an Indefinite Adjournment*

We have been asked by Mr. Leask to make a ruling on his request for an indefinite adjournment. This request arose from our earlier ruling that the University is a party to these proceedings leaving some doubt as to whether the President is a party and whether Mr. Leask as Counsel to the President may represent the President before this Committee. We were requested to rule on whether the University was a party. Our ruling did not prejudge the question of whether the President was also a party.

The conclusion that the University is a party was based on our interpretation of SAFT. The reason for our ruling that the University was a party derives from the essential question we are charged to consider —

is there cause for dismissal. This implies that the two contractual parties to the employment relationship which dismissal would terminate, Professor Wheeldon and Simon Fraser University, are parties to these proceedings.

SAFT specifies particularized functions for various persons in dismissal proceedings. There is a function for the initiator of these proceedings. That person in these proceedings is the President. During those deliberations on the previous ruling our view was and continues to be that the President in his capacity as the initiator of the charges is a party. As such he is entitled to be represented by Counsel and cross-examine witnesses.

There is a function for the originator of the charges. That person, in these proceedings, is the President. For that reason and in that capacity he is also a party to the proceedings. As such he is entitled to be represented by Counsel and cross-examine witnesses.

On the matter of the request for an indefinite adjournment there are a number of important issues to be considered. We are aware that any further delay raises serious impediments for and imposes substantial hardship on Professor Wheeldon in presenting her case. The question of who is a party and the possibility of a ruling that the University is a party has been directly known by people present at these proceedings for approximately one month and was raised indirectly almost six months ago at the commencement of these proceedings.

We are prepared to grant a definite adjournment for 24 hours. Before then we wish to give further consideration to the request for an indefinite adjournment or the possibility of an adjournment with a definite date for continuation of these proceedings, and consideration of the consequences that flow from either decision.

We stand adjourned for 24 hours. We believe, subject to Professor Carr's consent [consent given] that Mr. Leask should be authorized to use his own discretion on confidentiality of these proceedings so that he may inform the advisors to the President, and the Board of Governors, of material matters which may be necessary to them in their immediate deliberations.

Counsel for the University asked whether the above ruling was a change in the Committee's position as of yesterday that there was no ruling on whether the President was a party and does represent a ruling that the President is a party. The Chairman answered: It was our understanding that one of the reasons for a request for an indefinite adjournment this morning arose from confusion on the question of whether the President was a party and whether you as Counsel to the President had any status before this Committee. We felt in making a ruling on the request for an adjournment that it would be necessary to give some amplification of our previous ruling on the question of who is a party to these proceedings.

Following this the Committee granted one more definite adjournment for 48 hours to permit the University to consider its position. On reconvening notification was given to the Committee by the University terminating the hearings as described in I. *The Facts* above.

V. Can Judgment be rendered and Decision

The Committee also considered the issue of whether or not judgment can be rendered. On the one hand the University's position was that the Committee's function had ceased and it was without jurisdiction to render judgment. Furthermore, judgment on the merits of the evidence adduced would be inappropriate since all the evidence was not in and neither party had made arguments on the evidence.

On the other hand, Professor Wheeldon's position was that unless the President withdrew his charges against her the Committee was still seized of those charges. Furthermore the action of the University's Board of Governors has deprived her of the opportunity to clear her name and as a matter of fairness she should not be placed in the position of having unresolved and unwithdrawn allegations standing against her. Finally she submitted that the proceedings had reached a stage of development where it was possible for the Committee to render judgment on the evidence before it.

Our position is that the University is a party to these proceedings. The University through its chief executive officer, the President, initiated these proceedings and stated the charges. The University has had from the outset the burden of bringing forth sufficient evidence and argument to persuade the Committee that there is cause for dismissal. The unilateral termination of the hearings by the University has made it impossible to judge the merits of the case against Mrs. Wheeldon on the evidence adduced and the arguments relating thereto, and therefore we can make no finding on the merits of the evidence.

Because the University bears the burden of showing cause for dismissal and now, through its unilateral act, cannot, we find there is no cause for dismissal.

It is important, in addition, to explore this position from the point of view of the President who has maintained that he alone is the party. Assume for a moment that the President (and not the University) were the only party on the one side to these proceedings. Can it then be concluded that the proceedings were terminated by an outside agency, a sort of *force majeure,* so that the doctrine of frustration would apply to permit both sides to leave the proceedings with impunity ? First, Professor Wheeldon does not leave with impunity. She has been deprived of the opportunity to defend against charges brought against her without the charges being withdrawn. The significance of this is underlined by the gravity of the charges — engaging in a strike, refusing to teach and abusing student's trust — charges that if proven and without strong mitigating explanation would constitute cause for dismissal. Second, the President is not the innocent victim of a *force majeure.* It was he who called the Board of Governors into session under Section 52 of the Universities Act to discuss the question which allegedly led to their decision suspending Article 4. It was he who informed the Committee that its proceedings had terminated. Third, it is theoretically conceivable that the President could have replied to the Board of Governors decision to suspend Article 4 by saying that in his view the President was custodian of SAFT and could not act on such a decision. His position would thus have been that it is not possible for one of two parties to SAFT unilaterally to suspend one of its operative provisions and at least until the Faculty Association, the other party to SAFT, agrees so to amend it the President would be bound:

(a) to continue presenting his case before the Hearing Committee as one party to the ongoing proceedings

or

(b) withdraw the charges before the Committee.

Accordingly a finding of no cause for dismissal is conceivable even on the view that the President (and not the University) is the party to these proceedings.

VI. Reflections on the Dismissal Mechanism

Much of the Committee's thinking on the dismissal mechanism will be apparent from the previous parts. Here we reflect on some general themes which may be helpful in a reconsideration of SAFT or for subsequent use of dismissal mechanisms in other universities.

1. *Binding Decision*

Much of the early concern before this Committee and indeed before the first Committee considering the charges against seven faculty members was whether or not any decision of a Hearing Committee would be binding on the President. In our opinion the decision should indeed be binding construing the present language of SAFT in the sense that the President is bound not to recommend dismissal to the Board of Governors if the Committee finds no cause for dismissal. However that opinion really begs the question. The core issues are first enforcement of the Committee's decision and second what is the function of procedural review if such exists.

On the first matter of enforcement, given the decision in *Wheeldon v. Simon Fraser University*,[10] legal remedies do not appear to be available to enforce the decision. If the parties to SAFT desire to amend this SAFT to reverse the effect of that court case they could stipulate in the document that it is intended to have legal consequences and is intended to become a part of the employment contract of the faculty member. Alternatively the parties to that document could make Article 4, the Dismissal Mechanism, subject to the Arbitration Act so that a Hearing Committee would have the responsibility of making a finding on a submission to arbitration and remedies of court enforcement under the Arbitration Act would be available to enforce its decision. Neither of these alternatives should be attempted without careful consideration of their impact on the responsibilities conferred in the Universities Act. What is at stake here is whether the university can govern itself without resort to the legal process and the courts of law. Obviously it is much more desirable if the procedures can remain indigenous to the university community. The question remains, however, can they work without the external sanction.

The second matter of procedural review is more simple and more complex — more simple because SAFT does say something about the matter and more complex because what it does say is capable of a number of different interpretations.

In the preamble to SAFT the following appears:

> The sections below specify procedures through which certain faculty decisions are made on academic matters. The President should recommend the decisions of faculty to the Board of Governors after ensuring that

10. **Supra,** p 54, Footnote 5.

these procedures have been followed and that the Committees had all relevant information available to them. If the recommendation is unacceptable to the Board of Governors, the recommendation shall be referred by the President back to the University Tenure Committee for reconsideration.

The first question is whether this preamble has any application at all to Article 4 — the dismissal mechanism. One view is that it does because the preamble comprehends everything else in SAFT. Another view is that it does not for these reasons. Dismissal involves an event which will crystallize during the term of a contract. The events governed by this preamble are only those which crystallize at the terminal point of a contract. To say that the preamble does relate to Article 4 and the dismissal mechanism the following rather tortured interpretation would seem necessary. First, the decision of a Hearing Committee under Article 4 would have to be interpreted as a "faculty decision". That would imply that "faculty" is not limited to members of the teaching staff of Simon Fraser University but includes faculty members with tenure at any university i.e. members of the Hearing Committee. The second sentence taken by itself would suggest that the President should recommend the decision of no cause for dismissal to the Board of Governors, i.e. recommend a nullity. The third sentence would suggest the UTC has jurisdiction in a dismissal recommendation. Indeed, it suggests that a decision by a Hearing Committee of no cause for dismissal could be recommended by the President to the Board who could find it unacceptable. This would cause the recommendation to be referred by the President "back to the UTC" for a "reconsideration" when it had never been considered by the UTC in the first place.

This analysis suggests to us that if the President's reviewing power over the dismissal mechanism is founded in the preamble it sits there in a very unhappy state.

The only other place where a Presidential review power might be found is in Article 4 itself, 4.1(e) which reads as follows:

> The Hearing Committee shall report its decision to the President. The President may ask the Committee to reconsider its decision if he questions the procedures. The President will not recommend dismissal to the Board of Governors if the Hearing Committee finds there is no cause for dismissal.

The plain language of that provision implies that the President's discretion to request reconsideration only occurs after a decision or finding has been rendered and not before. Furthermore the President would seem to have only a discretion — "may" — to ask the Committee to reconsider. On one view, once the President has asked the Committee to reconsider and it has done so without changing its decision the President is powerless to do anything more by way of procedural review.

Given the unfortunate history of this procedural review power it should be clarified. If it is clarified to make it clear that the President has a continuing review power, in our view that would impose on him a most difficult conflict of interest. As the first Committee clearly pointed out he would be cast in the dual role of prosecutor and procedural judge, a conflict which is inimicable to one's sense of natural justice. This is a dual role which no President would willingly venture into. More important the threat that this poses to the individual faculty member of having the proceedings aborted by a grave procedural error which the President as prosecutor alone has power to

determine, is one with which that individual faculty member simply should not be faced. This suggests that other alternatives for procedural review responsibility, if such is necessary, should be found.

Thus one alternative is to eliminate any suggestion of a procedural review power altogether leaving it entirely the responsibility of the Hearing Committee to determine procedures. One view of the present provisions of SAFT as suggested above is that this is the correct position. The only external check is that the President may ask the Committee to reconsider its decision if he thinks there is an error in the procedures and do no more. This is a very attractive approach from the point of view of simplicity. It suggests that both parties should exercise great care in choosing a Hearing Committee in which they have the utmost confidence because, once chosen, they have no residual power or discretion to affect it.

Another alternative would be to give a procedural review power jointly to the Faculty Association Executive as representatives of the Faculty Association, one party to SAFT, and the Board of Governors, the other party to SAFT, requiring that only by their joint resolution could procedures of the Hearing Committee be called into question.

A third alternative would be to require alleged procedural errors to go before a court of law on a certiorari or declaratory action. A similar position would be reached by stipulating in SAFT that procedures before a Hearing Committee constituted a submission under the Arbitration Act.

A final alternative would be to name an impartial procedural arbitrator, for example a designated County Court Judge, to whom application could be made by one party and whose decision on procedural matters would be binding.

2. *Time*

A serious problem of all three Hearing Committees in the present situation is the delay involved in setting them up and the time required in their actual proceedings. The first difficulty compounded the second because the more remote the events being considered, the more time was required for testimony, the more imprecise was the evidence and greater was the difficulty experienced in getting documentary evidence. One remedy would be to set certain time limits within which the initiating party must act and certain time limits along the way (analogous to a Parliamentary "guillotine procedure") by which time the Committee must be constituted, hearings must be held and a decision rendered. This might place some restrictions on a full and fair hearing but if the alternative is a conclusion that the hearing committee process is unworkable as it stands this might be an appropriate compromise suggestion. These are all factors which have important cost ramifications as well.

Another approach is to use local persons wherever possible to avoid the expense and delay of bringing in persons from afar. Finally considerable pressure should be placed on the parties to arrive at a substantial written agreement on facts prior to the commencement of the hearings so that the greater part of the time of the hearings themselves could be devoted to arguments on those facts. In addition, written submission or argument could be required to reduce the time required for actual hearings.

3. *Production of Documents and Calling of Witnesses*

The rulings set out above will indicate the very considerable difficulty that this Hearing Committee and Counsel for one party experienced in getting

access to documents. A great deal of clarification of SAFT is necessary in this regard if similar problems are to be avoided in the future. One simple solution would be to make the proceedings subject to the Arbitration Act which would give the Committee powers to call persons and documents. If there is particular concern for privileged communication, such as confidential letters of recommendation or confidential memoranda of tenure committees, then the considerations that should bear on that privilege should be clearly set out in SAFT and some direction should be given as to whether the Committee should be final judge of the privilege or not.

We took the view that unlike a court of law or a tribunal constituted under the Arbitration Act we did not have the power under SAFT to compel the production of documents or require the appearance of persons. We also took the view that we were not analogous to a commission of inquiry to seek out evidence on our own initiative. Rather our function was to hear evidence put before us, weigh it and judge the arguments based on it as fairly as we could. The one safeguard in this limited hearing role was this. While we could not compel production of evidence, where it did lie in the power of one party to the proceedings and not in some extraneous source, the unwillingness to produce it could support a negative inference of fact against that party, particularly where that evidence was the best source to determine the truth or falsehood of an allegation by the other party and there was some evidence (albeit less weighty) supporting that other party's allegation. As a matter of fairness this gives additional significance to the ruling on parties.

4. *Who are the Parties*

(a) *Why question arose in these proceedings*

The request for a ruling by Professor Wheeldon that the University was a party to these proceedings arose because of difficulty in obtaining access to documents. These documents were, in her submission, necessary and relevant to her claim of justification for the strike. The University's position was that the President alone was a party to these proceedings. While the President had produced those documents that the Committee ruled relevant where they were in his sole power he contended that he had no power to compel the production of documents in the hands of other officials in the University.

The point is brought into direct focus by consideration of a specific situation. Counsel for Professor Wheeldon contended that the renewal, promotion and tenure decisions made in respect to a number of people in PSA by the special appointed DTC were unusual. To document that contention it was necessary to compare those decisions with decisions made by other DTC's in other departments of the Faculty of Arts. Therefore, he requested from the Dean of Arts, while the latter was giving testimony, a statistical summary of decisions made by all DTC's in the Faculty of Arts in the year 1969. In particular, he requested the following statistical categories:

(i) the rank of any individual who went before DTC,

(ii) his degrees at that time,

(iii) the period for which that individual had already been a faculty member at the university, and

(iv) the recommendation made about that person by the DTC, i.e. non-renewal, the period of renewal if renewal was recommended or any recommendation on promotion or tenure, and any statement of condition or contingency attended to the recommendation.

Names of individuals were not to be disclosed.

Counsel for the University resisted that request on several grounds. One of these grounds appears in the transcript as follows:

> Counsel for the University: "If you take the view that this is a demand for discovery, not of documents exactly, but of something [the documents], I will then suggest to you that Dean Sullivan [Dean or Arts] is not someone who can profitably be discovered here."

The Committee then put the following question to Counsel for the University "you suggested that if this is a discovery of documents, then Dean Sullivan is in essence not the person to whom discovery can go ?" and then asked him if he could clarify the point. He replied:

> "To put it very quickly I would suggest that discovery applies to parties rather than to witnesses and that we have not agreement as to who the parties are. My friends take the view that the University is a party and I, that the President is a party, that if I am right the Dean certainly can't be discovered. If they're right, it's the University that must produce discovery to get the information that the Dean might have, but still in his personal capacity he wouldn't be discoverable."

This view would mean that documents in the possession of the Dean as an administrative officer of the University would be insulated from any negative inferences the Committee might make. We were not persuaded of this view.

The issue of who and what could be discovered took on some considerable urgency when after more than twenty days of hearings extending over five months Professor Wheeldon had been able to gain access to only a very small percentage of documents in the hands of various University officials and committees within the University community which she believed to be essential to her case. Accordingly she requested a ruling that the University was a party.

(b) *Rationale for the Ruling*

The Committee stated the basic reasoning for the ruling that the University was a party in the text of the ruling itself. At this point we discuss some of the broader rationale which underlay our thinking. We looked first to SAFT as the basic terms of reference for the Committee. Our conclusion was that there was nothing in SAFT which clearly indicated:

(a) that the President was the party on the one side to these proceedings,

(b) that the initiator of the proceedings or the originator of the charges was the only party to these proceedings, or

(c) that the University was precluded from being a party.

The heading for Article 4 of SAFT is "Dismissal Procedures". Article 2.2 defines dismissal as "the termination of appointment by the University without the consent of the Appointee, other than at the end of a stated contract period." At the most basic level this is precisely what is happening in these proceedings. A faculty member is being dismissed by the University. The function of the Hearing Committee is to determine whether or not there is cause for dismissal. It seems to follow that the two parties to the dismissal proceedings are the faculty member and the University.

Looking within, Article 4.1(a) states that formal dismissal procedures can only be *initiated* by the President, the Academic Vice-President or the Dean.

If it had been intended that the initiator of the dismissal proceedings be the party, then this would be an appropriate place for that to be stated. It is not.

Article 4.1(d)(ii) and (iii) are permissive provisions and use the phraseology "all parties", first extending to them and their counsel the right to cross-examine and second granting to them and their counsel the right to appear at all hearings of the Hearing Committee. If the intention of the drafters of SAFT were clearly that only the faculty member concerned and the initiator of the proceedings should be present then it would have been more appropriate to say the faculty member concerned and the initiator of the proceedings may appear with their counsel at all hearings and have the right to cross-examine rather than the more expansive concept "all parties".

Article 4.1(d)(iv) states "the originators of the charges shall be present". Though the use of the word originators suggests that the originators of the charges might be different persons than the initiator of the proceedings, at the very least it would seem that this provision does not contemplate that the originator of the charges will always be the only party to the proceedings.

We concluded that taken at its best Article 4 was ambiguous or silent on the question of whether or not the University is a party.

This gave us reason to look to other sources for determination of the question. Counsel for the University urged on us the position that these hearings were in the nature of an internal administrative process to provide advice to the President on whether or not he should recommend dismissal to the Board of Governors. We were somewhat reluctant to view our function as being within the administrative arm of the President unless there were explicit provisions to that effect. We could find none in SAFT which clearly substantiated that view.

Counsel for Professor Wheeldon expressed a view founded in the law of principal and agent and the law relating to the authority of agents acting on behalf of a body corporate. Accordingly he submitted that the President as chief executive officer of the University under the Universities Act, by initiating these proceedings and originating these charges, was acting as the authorized agent of the University and necessarily implicated the University in any such activity that was within his authority. It was apparent to us that the President was not exceeding his authority as the chief executive officer of the University in these proceedings. We therefore could not find any fundamental flaw in the logic that the President in so acting was acting on behalf of the University and the University was a party to these proceedings.

We finally looked to the basic question that we were required to decide. The question was not, does the President have reason to recommend dismissal to the Board of Governors but rather is there cause for dismissal. The latter phraseology is precisely that used in SAFT in charging the Hearing Committee with its function. The question then is rooted in the employment relationship between Professor Wheeldon and the University, not the President. The question is rooted in the contract between Professor Wheeldon and the University, not the President. The outline of the evidence and the argument by Counsel for the University was founded on the wrong done by one party to a contract to another party to the contract. In describing the issues before the Hearing Committee, Counsel for the University stated that the two issues were a breach of contract by failing to teach and a breach of contract by misconduct (abuse of students' trust). It follows logically that the two parties to that contract are therefore parties before these proceedings.

We also looked beyond the basic question we had to decide to other related proceedings. The view that the University is a party to dismissal proceedings before a Hearing Committee seems to have been the view of Mr. Justice Hinkson in the British Columbia Supreme Court litigation referred to above, *Wheeldon v. Simon Fraser University.*[11] That case was an application by Professor Wheeldon for a declaration that SAFT constituted part of the contract between the University and Professor Wheeldon. There were two parties and only two parties to that litigation. One party was Professor Wheeldon. The other party was Simon Fraser University. Outlining the history of difficulties prior to Professor Wheeldon instituting her law suit, Mr. Justice Hinkson said (at p. 643):

> The formal hearing in respect of the dismissal of the plaintiff was commenced on May 15, 1970, and has been adjourned to a date in June, 1970 [the first committee hearing the cases of seven faculty members referred to above]. The evidence discloses that in the course of the proceedings leading up to the formal hearing *the parties* have been following the procedures set forth in the statement on academic freedom and tenure. *The defendant* says that the statement and the procedure of provisions therein contained may be followed *by the parties* in such proceedings upon the basis that the statement is a matter of policy. However, *the defendant* says that *the plaintiff* cannot as a legal right, insist that in any dismissal proceedings *the parties* abide by the procedure and related matters contained in the statement [underlining and bracketed note added].

It is apparent that it was Mr. Justice Hinkson's view that the University as party (as opposed to the President as party) had been following the procedures set forth in SAFT in the course of the proceedings leading up to the formal hearing. It apparently was also his view that the University (and not the President) said that the statement and the procedure and provisions therein contained are to be followed by the parties in such proceedings upon the basis that the statement is a matter of policy.

It would appear that the Hearing Committee which considered the case against Professor Popkin took this same view that the University was the party on the one side to the proceedings. For example in the reported decision of that Committee[12] the following appears (at pp. 6-7):

> *Analysis of Stated Grounds*
>
> A.F.T. uses the words "grounds for dismissal" in describing the statement that *the University* is required to make, and the words "cause for dismissal" in describing the task of the Hearing Committee. We take the words "grounds for dismissal" to mean a statement of the particular class of misconduct or neglect of duty which, in the view of *the University,* represents cause for dismissal. (...) *The University's* statement includes two separate grounds for dismissal, the first being breach of contract, and the second being the double offence of violation of duty to students, abusing the trust of students [underlining added].

The President of the University was the initiator of the proceedings and the originator of the charges before that Committee as he was before this Committee. However, it is apparent from the statements quoted above and others in that Committee's decision that it viewed the two parties to its proceedings

11 **Supra,** See Footnote 5, p. 54.
12. In The C.A.U.T. **Bulletin,** Winter, 1971, entitled "Arbitration at S.F.U.: The Popkin Case."

to be the University on the one hand and Professor Popkin on the other. Whether that view only emerged in the final report of that Committee we do not know. However, even if it only emerged in the final report the President at that time did not view it as a sufficiently grave procedural error to require a reconsideration of the decision by that Committee. If that view emerged earlier in the Hearings, the President obviously did not view it as of sufficient importance to take it as a special question to the Board of Governors under Section 52 of the Universities Act with the result that the dismissal mechanism would be suspended.

The Committee sought to have Counsel for the University show cause why a ruling that the University was a party would make it impossible for the University to continue with these proceedings. We were not satisfied that any such cause was shown. The following propositions were suggested by Counsel.

First, he proposed that a holding, that the University was a party, was totally inconsistent with the intention of SAFT. On our examination of SAFT, detailed above, we could come to no such conclusion.

Second, he suggested that such a ruling would fundamentally destroy the separation of functions contemplated in SAFT. Had we held that by virtue of the University being a party to these proceedings the University's chief executive officer, the President, would then have power over documents in the hands of committees independently created within SAFT, such as the UTC or a DTC, claims of privilege aside, then there might have been some substance in that argument. However, our collateral ruling to the ruling that the University was a party made it quite clear that the University through its chief executive officer did not have power over documents in UTC or a DTC.

Third the Counsel suggested that such a ruling would bind the hands of the Board of Governors on the ultimate decision regarding dismissal or otherwise. Again we found this very difficult to understand.

If the Hearing Committee had found there was no cause for dismissal then under SAFT the President would not recommend dismissal to the Board of Governors. Thus the Board would never be seized of the matter.

If on the other hand, the Hearing Committee had found cause for dismissal then the President would still have individual discretion as to whether he would forward the decision of the Hearing Committee to the Board or of his own initiative recommend a dismissal to the Board. Equally the Board as soon as the President's recommendation for dismissal came before it, would still have the discretion as to whether it wished to follow that recommendation or not. Therefore we could not find that this third position was persuasive that our ruling that the University was a party was an unworkable one.

The fourth position of Counsel for the President was that the ruling might preclude him from appearing before the Hearing Committee because he took instructions from the President only and on the premise that he was acting for the President and not for the University. The suggestion from the Committee that the University was appearing in these proceedings through the agency of the President, its chief executive officer, did not completely allay this concern. The Committee had some difficulty in seeing a function for the President in his presidential capacities which was a different function than that of chief executive officer of the University representing the Univer-

sity. However, in an attempt to ensure that the proceedings would continue and to permit Counsel to appear on behalf of the President as he viewed it in his presidential capacities, the Hearing Committee issued a subsequent ruling which named the President, as the originator of the charges, a party to these proceedings.

Finally, we considered the analogy to legal procedure in this matter and in particular to six Canadian university cases alleging wrongful dismissal which were the subject of judicial review and discussed by Professor Bora Laskin, as he then was, in "Some Cases At Law" in *A Place of Liberty*.[13] In addition the leading Canadian textbook on legal procedure, Williston and Rolls, *The Law of Civil Procedure*,[14] states the following (at p. 242):

> Joinder of parties is governed by certain rules: (...)
>
> (ii) Co-plaintiffs must be represented by the same solicitor and counsel. They will never be allowed to sever their case, and no *lis* can be tried between them. (In re *Matthews*, [1905] 2 Ch. 460; In re *Wright*, [1895] 2 Ch. 747).
>
> (iii) The court has no jurisdiction over any person who is not a party to the action. (*Brydges v. Brydges and Wood*, [1909] P. 187 [C.A.]).

A leading U.S. text on Procedure, *Civil Procedure* by Fleming Jr.,[15] discusses "Necessary and Indispensable Parties" and states that "necessary parties are those who must be included in an action either as plaintiffs or defendants unless there is a valid excuse for their non joinder". One of the considerations proposed for determining parties who should be joined in an action is "protection of present parties from prejudice because of the absence of non parties". All of this reinforced the ruling that the University was a party.

This brings us to the core of the practical consideration before us in making that ruling. By taking the position that the President alone was the party to these proceedings on the one side, the President resisted production of documents in the hands of an administrative officer, subordinate to the President, the Dean of Arts where, absenting any claims of privilege, the documents were of important relevance to a fair hearing in the case. The Committee anticipated it would be rather unfair should it base any finding on the position that the originator of the charges had made certain claims which *prima facie* gave rise to a finding of cause for dismissal but because the University or other administrative officers in the University resisted the production of documents which might rebut that *prima facie* case he must be denied judgment and suffer the consequence of precluding his claims from being considered in their full context. To permit the President's position to go unchallenged then would not only deprive the opposing party to the proceedings of necessary rights of discovery of documents to develop the rebutting case but, as a matter of equity, would render it quite difficult for the Committee to make any finding based on withholding of information.

Another practical consequence that is only hypothetical to the present situation is that a cynical use of the alternatives available in Article 4 of designating any one of three University officials, the Dean, the Academic Vice-President or the President as the initiator of the proceedings could prevent the discovery of documents which were important to the rebutting case of the faculty member. For example, if all such pertinent documents were in the

13. Edited by George Whalley, Clarke, Irwin and Co., Toronto, 1964.
14. Butterworth and Co., Toronto, 1970.
15. Little Brown and Co., 1965, pp. 413-420.

hands of either the Academic Vice-President or the President, then by ensuring that the Dean of the Faculty were the initiator of the dismissal procedures and adopting the President's position that the initiator only was a party — and only a party — to the proceedings can be discovered, then the faculty member concerned would be precluded from gaining access to those documents most pertinent to his case.

5. *Summary*

In reflecting on all of the above considerations our own preference would be to see a dismissal mechanism simply constructed that functions without external checks and without recourse to courts of law or legal process. In this way the objectives speed, economy and acute sensitivity to the needs of the university community by people who are part of the university community are achieved. But the ultimate goal of natural justice depends on the good faith and determination of all parties to the procedures that they will work.

In the absence of guiding criteria our basic approach has been to analogize to rules of law and principles of natural justice as being the least uncertain, the most fair and ultimately most appropriate for proceedings of this kind. This required the Hearing Committee to see itself as external, impartial and in cases of any doubt, aloof. Thus, we could not be persuaded that we are an extension of the President's internal administrative responsibilities nor that we were to seek information in the role of inquirors.

VII. Conclusion

We suggest that these reflections are important in a broader context. What is really at stake here are two fundamental issues of the modern university — can academic freedom and tenure survive and can the university govern itself internally.

The arguments for and against tenure are well known. It is sufficient to quote from the preamble of SAFT:

> Academic Freedom and Tenure do not exist because of a peculiar solicitude for the human beings who staff our academic institutions. They exist, instead, in order that society may have the benefit of honest judgment and the independent criticism which might otherwise be withheld because of fear of offending a dominant social group or transient social attitude.
>
> (Clark Byse and Louis Joughin, Tenure in American Higher Education: Plans, Practices, and the Law, Cornell University Press, 1959.)

Another author puts the point on an individual footing:

> Stated inelegantly but simply, academic freedom is the freedom of the scholar to search for truth, to reach his conclusions with intellectual honesty, and to retain his rights and privileges as scholar and teacher, however unpopular his professional conclusions might be. The traditional example is that a Galileo or a Darwin should be allowed to hold his professorship even though the conclusions of his experimental or theoretical research, or both, are held by prevailing view to be heresy.
>
> ("Whiter United States Universities",
> George E. Pake, *Science*, May 28, 1971, 908-916.)

If members of the university community are going to defend academic freedom and tenure it is important that there be a dismissal mechanism which

commands their confidence and which does, in fact, work so that the university community can shed those who for clear reason, fairly determined, do not deserve this secured status. If the dismissal mechanism does not work critics of academic freedom and tenure may be successful in abolishing it on the argument that it is a pernicious screen to hide the incompetent or the one who is undeserving. Thus, academic freedom will be destroyed indirectly. If the dismissal mechanism functions, but does not function fairly, then the mechanism itself directly destroys academic freedom.

A network of institutions and mechanisms of which the dismissal mechanism is only one have grown up with much recent change for the protection of academic freedom in the modern university. This network is part of the internal government of the university. In form Simon Fraser University had evolved to a much more developed stage than most measured by the criteria of faculty participation and control. What then is at issue is the substantive and practical challenge to make this internal government work. If it cannot work there are plenty of critics who will be quick to suggest, and implement, other alternatives.

Dated and issued unanimously at Toronto, Ontario, September 3, 1971.

(Signature)

Peter T. Burns

Harold Weinberg

David L. Johnston
(chairman)

PROCÉDURE DE GRIEFS: DROITS ET RESPONSABILITÉS DES PROFESSEURS ET DES ASSOCIATIONS LOCALES DE PROFESSEURS

Avant-propos

Le Comité de la liberté universitaire et de la permanence de l'emploi de l'A.C.P.U. reçoit de plus en plus de griefs officiels de la part de professeurs et d'associations locales. Entre 1960 et 1964, 30 plaintes ont été enregistrées sans qu'aucune n'atteigne le stade d'une enquête en bonne et due forme. Au cours de l'année universitaire 1969-1970, le Comité s'est occupé de 89 griefs. Dès 1966, il devenait clair que le volume de travail augmentait à tel point que l'A.C.P.U. a dû publier des directives officielles visant les nominations et les conditions d'emploi. Ces directives, qui ont été officiellement adoptées en 1967, ont été modifiées de temps à autre à la lumière de l'expérience [1]. Ces directives, toutefois, ne renferment pas de recommandations détaillées quant au rôle propre du professeur pris individuellement et de l'association locale quand des problèmes surgissent. Voilà la lacune que le présent document tente de combler.

La première responsabilité de l'association des professeurs est de s'assurer que l'université a une procédure appropriée et qu'elle la respecte. Si l'association s'est assurée que la procédure existe et est effectivement utilisée, elle devrait avoir moins de plaintes légitimes à régler.

A. Que doit faire le professeur ?

1. *Plaintes individuelles*

Si un professeur estime avoir été lésé, il doit tout d'abord tâcher de régler l'affaire lui-même en traitant directement avec l'administrateur en cause, c'est-à-dire normalement le directeur de son département ou son doyen. Pour désagréable qu'il soit, un tel contact personnel est habituellement préférable à un échange de lettres. De telles revendications doivent se faire avec le moins de retard possible. Et s'il y a entente, il doit alors y avoir échange de lettres entre les parties intéressées pour faire état de cette entente. [2]

1. Edward J. Monahan, « Academic Freedom and Tenure and the C.A.U.T. — The First Twenty Years », **Bulletin de l'A.C.P.U.**, XVIII, 4 (1970); J. Percy Smith, « The Work of the Committee on Academic Freedom and Tenure », **ibid.**, XVII, 2 (1969); A. Berland, « On the Present State of Academic Freedom », **ibid.**, XVIII (1970); Daniel A. Soberman, « Tenure in Canadian Universities », **ibid.**, XIII, 3 (1965); René Hurtubise, « La stabilité d'emploi des professeurs d'universités de la province de Québec », **ibid.**, XIV, 3 (1966); George Whalley, éd., **A Place of Liberty : Essays on the Government of Canadian Universities,** Toronto : Clarke, Irwin and Co. Ltd., 1964.
2. Si le professeur en cause a un doute quelconque sur les mérites du règlement offert, il devrait en discuter avec le président de l'association des professeurs, avant d'accepter par écrit l'offre qui lui est faite.

2. *Appel selon les procédures de l'université*

Le professeur doit normalement épuiser les recours qui lui sont accessibles à l'université avant d'en appeler formellement à son association locale, mais il peut demander à l'association de veiller à ses intérêts. Si, cependant, le professeur a des doutes quant à ses droits, à la valeur des recours qui s'offrent à lui ou aux solutions possibles de son grief, il doit consulter le président du comité de griefs de l'association des professeurs. Il peut aussi demander à l'association de l'aider à présenter sa cause aux autorités universitaires appropriées, et le président du comité de griefs de l'association peut proposer d'autres professeurs qui pourraient être disposés à lui accorder une telle aide, mais ces professeurs ne doivent pas faire partie du comité de griefs de l'association. L'association doit cependant rester libre de décider si elle doit assigner un professeur pour aider le plaignant.

3. *Procédures d'appel déficientes*

Si les méthodes dont l'université se sert ne répondent pas aux exigences minimales d'équité énoncées dans les directives de l'A.C.P.U. ou si, pour quelque autre raison, ces méthodes paraissent inappropriées, le président du comité de griefs doit consulter le secrétariat de l'.A.C.P.U. avant de recommander qu'un professeur accepte la procédure que lui offre l'université.

4. *Appel par l'intermédiaire de l'association locale*

Si le professeur décide d'en appeler à l'association locale, il devrait le faire par écrit. Il devrait donner un exposé écrit complet du problème, accompagné de la documentation pertinente. La suppression d'éléments de preuve n'est pas de nature à aider le professeur ni auprès de l'administration ni auprès de son association. Il devrait en même temps rappeler les mesures qu'il a prises pour tâcher d'obtenir un redressement et bien indiquer à l'association la solution qu'il espère, c'est-à-dire la réintégration, la rétractation d'une déclaration, etc. (Voir également les procédures indiquées dans la section B.)

5. *Recours juridique*

Le professeur a le choix entre des moyens universitaires et des moyens juridiques de redressement de ses griefs. S'il opte pour les recours universitaires, il peut quand même consulter un avocat quant au fond de sa cause, mais l'avocat ne peut pas intervenir en son nom auprès de l'université ou de l'A.C.P.U. tant que l'affaire est entre les mains de l'association locale ou de l'A.C.P.U. Si le professeur fait intervenir un avocat, l'association locale et l'A.C.P.U. se retirent normale-

ment de l'affaire. S'il a déjà fait intervenir un avocat, il reste libre de changer d'avis et de demander que l'affaire s'instruise par les voies universitaires. Il doit alors lui-même écrire aux parties intéressées ou faire écrire son avocat pour les informer du changement de procédure. Un professeur peut aussi recourir aux tribunaux après avoir épuisé les recours de l'université, de son association et de l'A.C.P.U., et il peut évidemment à tout moment retirer sa réclamation de l'association locale et de l'A.C.P.U. et entamer des poursuites contre l'université.

Nonobstant ce qui précède, si les procédures de l'université ou celles de l'association locale permettent que le professeur soit représenté par un conseiller juridique au cours des réunions d'enquêtes sur un renvoi, il peut être ainsi représenté, à ses frais, sans pour cela causer préjudice à sa cause vis-à-vis de l'association locale ou vis-à-vis de l'A.C.P.U. Normalement, cette représentation juridique ne devrait pas être autorisée devant les comités de renouvellement, de permanence ou d'appel de l'université. On ne doit jamais, en ce cas, laisser les détails de technique juridique entraver la solution juste et rapide des griefs.

L'A.C.P.U. estime préférable de chercher des solutions universitaires à des problèmes universitaires:

> « Les conflits universitaires devraient être réglés par les moyens équitables disponibles à l'intérieur de la communauté universitaire. On ne devrait avoir recours aux tribunaux que dans le cas où ces procédures auraient échoué *(Supra p. 20, Énoncé de principes relatif à la nomination des professeurs, II. 6)*.

La majorité des tribunaux canadiens répugnent à reconnaître légalement bon nombre des droits qui ont été affirmés dans les universités et elles ont soutenu que les professeurs ont peu de droits autres que ceux qui sont spécifiés dans leurs contrats. Si, par conséquent, un professeur fait appel à un homme de loi et à l'association locale, il peut obtenir des avis contradictoires étant donné que chacun parle d'un point de vue différent. De plus, les avocats coûtent cher, et ni l'association locale ni l'A.C.P.U. ne pourront contribuer aux frais de l'avocat qu'un membre peut engager, surtout s'il entame des procédures sans consulter son association ou l'A.C.P.U.

Le professeur peut demander un conseil juridique à son association. L'exécutif de l'association peut, à sa discrétion, demander l'avis d'un professeur de droit de l'université au nom du professeur ou, s'il n'existe pas de faculté de droit à l'université en question, il peut demander l'avis de l'A.C.P.U. Mais ni

l'association locale ni l'A.C.P.U. n'ont l'obligation de donner des conseils sur des questions d'ordre juridique même si le professeur en cause l'exige.

L'A.C.P.U. a une caisse de défense de la liberté universitaire qu'elle peut utiliser à sa discrétion pour acquitter des frais d'avocat dans les cas importants de liberté universitaire. Ces fonds doivent normalement servir à aider les professeurs à se défendre contre des attaques en justice ou qui ont besoin d'assistance judiciaire à cause de quelque problème particulier qui peut se poser dans la défense de la liberté universitaire. Les professeurs peuvent présenter une demande écrite au Comité de la liberté universitaire et de la permanence de l'emploi pour obtenir de l'aide de cette caisse.

6. *Appel direct à l'A.C.P.U.*

Le professeur a la liberté de présenter son grief directement au secrétariat de l'A.C.P.U. Il ne devrait pas normalement le faire avant d'avoir consulté son association locale pour lui demander son aide. En pareil cas, il doit adresser une lettre au secrétaire général de l'A.C.P.U. en fournissant les raisons et les documents qui motivent son intervention auprès de l'A.C.P.U. directement. Le secrétaire général, à sa discrétion et après consultation avec le Comité de la liberté universitaire et de la permanence de l'emploi, peut accepter un tel cas ou le renvoyer à l'association locale. Quand elle accepte une cause, l'A.C.P.U. a pour pratique habituelle de demander renseignements et conseils à l'association locale.

7. *Appel de la décision d'une association locale*

Une fois qu'une association locale s'est occupée de la cause d'un professeur, celui-ci reste libre d'en appeler à l'A.C.P.U. du jugement de cette association s'il ne le croit pas juste ou équitable. Le professeur doit fournir toute la documentation voulue. L'A.C.P.U. conseille normalement l'association locale à propos des griefs et s'informe de sa position comme de celle du membre de l'association locale. De tels cas sont normalemet examinés par le Comité de la liberté universitaire et de la permanence de l'emploi et la décision que prend ce comité d'instruire ou non la cause est sans appel.

8. *Publicité*

Si le professeur désire recourir aux bons offices de l'association locale ou interjeter appel auprès de l'association, il doit s'abstenir de toute publicité relative à sa cause. Il ne doit pas accorder d'entrevues aux organes de diffusion ni tenter de leur communiquer les renseignements en douce. De façon générale,

la publicité durcit les positions et rend la conciliation plus difficile.

Le professeur reste évidemment libre, en tant que citoyen, de faire toute déclaration publique qu'il veut dans les limites de la loi, mais l'A.C.P.U. et les associations locales se réservent le droit de se retirer des causes qui font l'objet d'une telle publicité. Si l'université ou un de ses représentants fait des déclarations publiques sur l'affaire, le professeur — de préférence après avoir consulté l'association locale — et l'association même sont libres de répondre. En outre, si l'université adopte, dans le privé, une attitude outrageante, par exemple, en refusant d'entamer des procédures dans un délai raisonnable, l'association locale et l'A.C.P.U. peuvent se trouver dans l'obligation de rendre leur position publique. Le professeur doit s'abstenir de chercher, par des discours ou d'autres moyens d'intervention publique, l'appui général des étudiants. Les autres professeurs et les administrateurs doivent de même s'abstenir de faire des déclarations publiques sur l'affaire. Cette ligne de conduite n'interdit pas aux organismes d'étudiants dûment constitués, soit au niveau du département, soit au niveau de l'université, de faire eux-mêmes des représentations sérieuses à propos de cas particuliers qui peuvent déjà être du domaine public, pas plus qu'un professeur ne peut être pénalisé ou frappé dans ses droits auprès de l'association locale par un tel comportement de la part des étudiants, s'il ne les a pas incités à poser publiquement des gestes en sa faveur. [3]

9. *Accusations malveillantes*

Le professeur qui désire déposer un grief comportant des accusations contre un autre professeur ou un membre de la communauté universitaire a l'obligation personnelle de s'assurer que de telles accusations sont formulées avec modération et prouvées dans la mesure du possible. Ni l'A.C.P.U. ni l'assosiation locale ne peuvent prêter leur appui à des vengeances personnelles ou à des attaques malveillantes à l'endroit de tiers. Le professeur doit savoir qu'il n'est pas de bonne guerre de soulever l'antagonisme des présidents ou d'autres professeurs par des attaques personnelles. (Voir également les *Directives de l'A.C.P.U. en matière de déontologie, infra p. 62)*

10. *Diffamation (verbale ou écrite)*

Les professeurs doivent se rendre compte que leurs collègues peuvent, dans l'exercice de leurs fonctions académiques et administratives, être appelés de par leur mandat à porter des jugements sur la valeur de tel ou tel professeur en particulier.

3. Si l'association locale donne cette raison pour justifier son refus de prendre le cas en main, elle devrait permettre au professeur de se faire entendre avant de prendre une décision.

Ces décisions font partie du fonctionnement normal de l'université et restent ordinairement à l'abri de poursuites en diffamation. Les professeurs ne doivent pas contester de telles déclarations devant les tribunaux (ou ailleurs) en alléguant diffamation à moins de ne pouvoir prouver qu'une falsification délibérée a été malicieusement présentée et a porté gravement préjudice à la réputation du professeur en cause. (Voir également les *Directives de l'A.C.P.U. en matière de déontologie.*)

11. *Participation des étudiants*

Si le professeur désire que l'association locale ou l'A.C.P.U. fasse enquête dans son cas, il doit normalement le faire selon les modalités prévues par l'université et par l'association locale. Dans certaines universités canadiennes, les modalités comportent la participation des étudiants dans certaines des structures qui peuvent prendre l'affaire en considération. Le professeur ne doit pas, dans ces cas, s'opposer à la présence d'étudiants légalement désignés à des organisations dûment constituées.

B. Que doit faire l'association locale ?

1. L'association locale doit, en principe, assumer la responsabilité de mener promptement et attentivement les enquêtes relatives aux griefs des membres du corps professoral. La solution des griefs est d'autant plus difficile à réaliser qu'on attend plus longtemps pour le faire. La procédure suggérée ci-dessous pour les comités de griefs des associations locales ne devrait jamais être la cause de retards exagérés.

2. L'association doit se donner un comité de griefs élu par l'association ou désigné par son exécutif. Si l'on procède par nomination, l'exécutif doit veiller à ce que le comité comprenne des représentants de professeurs avec la permanence et sans la permanence. Ni le président ni les membres du comité ne doivent détenir des postes administratifs (c'est-à-dire vice-président, doyen, directeur de département, etc.) qui risqueraient d'être la cause de conflits d'intérêts dans l'exécution de leurs fonctions. L'association doit songer à la possibilité de mandats expirant à des dates différentes afin d'assurer la continuité. Dans les petites universités, il peut être peu pratique d'avoir un comité distinct pour s'occuper des griefs. Dans ce cas, c'est l'exécutif qui doit se charger de ce travail.

3. Le Comité de griefs doit être accessible à tous les professeurs. Si le professeur n'est pas un membre en règle de l'association, on doit l'encourager à y adhérer. L'association locale doit toutefois s'intéresser à tous les aspects de la liberté universitaire et de la permanence de l'emploi sur le campus et

s'occuper, par conséquent, de toutes les causes qui lui sont soumises.

4. Le professeur qui est en cause doit d'abord discuter la question avec le président du comité de griefs. Celui-ci peut recommander:

(a) que le professeur épuise les recours prévus par l'université avant de s'adresser au comité des griefs.

Note : Normalement, dans les cas de non-renouvellement de contrat, de refus de la permanence, et de renvoi pour un motif grave, si l'université a offert de respecter l'Énoncé de l'A.C.P.U. sur les nominations universitaires et la permanence de l'emploi, le président du comité de griefs recommande que le comité n'intervienne pas davantage sauf pour continuer à veiller aux intérêts du professeur et s'assurer que toutes les modalités sont observées en toute justice.

(b) que le président du comité de griefs tente une médiation officieuse entre le professeur et l'autorité administrative intéressée.

Note : L'association devrait conclure une entente avec l'administration de l'université de sorte que le président du comité de griefs ait accès aux cadres administratifs supérieurs, y compris les directeurs de départements. La médiation officieuse comporte habituellement des entretiens privés entre le président du comité de griefs et l'administrateur en cause, en l'absence du réclamant ou d'autres témoins. Dans ces pourparlers, on peut examiner toutes les solutions possibles, qu'elles aient été ou non officiellement approuvées par les parties en cause; mais le président du comité de griefs ne doit pas indiquer qu'une solution en particulier est acceptable au réclamant à moins que celui-ci n'en ait convenu. A la fin des entretiens officieux, le président du comité de griefs devrait consigner par écrit les résultats, positifs ou négatifs, qui lui semblent en découler et en confirmer la justesse avec l'administrateur en cause. Le moyen le plus simple est une lettre ainsi tournée: « La présente confirme que, à notre rencontre du 2 janvier 1482, nous avons convenu . . . » OU « que nous n'avons pu en arriver à une entente au sujet du professeur X. » Le président du comité de griefs peut également décider de reprendre la médiation officieuse à un niveau plus élevé de l'administration. Le réclamant doit être tenu au courant de ce que fait, en son nom, le président du comité de griefs. Si le professeur rejette une solution

émanant d'une médiation officieuse, il peut en appeler par écrit à tout le comité de griefs. Le professeur conserve le droit de veto ultime en ce qu'il peut retirer sa plainte à l'association des professeurs.

(c) que le cas du professeur n'est pas fondé;

Note : Dans ce cas, si le professeur rejette le conseil du président du comité de griefs, il devrait avoir le droit d'en saisir le comité de griefs, mais il faudrait lui signaler que le comité sera également saisi de l'opinion du président du comité de griefs.

(d) que la cause soit entendue par tout le comité de griefs.

5. Avant d'entreprendre une des étapes explicitées ci-après, le professeur doit communiquer son grief par écrit à l'association des professeurs et fournir tous les documents pertinents qu'il a en sa possession. Il incombe au président du comité de griefs de veiller à ce que la documentation soit aussi complète que possible: il devrait demander ces renseignements, s'il y a lieu, du professeur et de l'administration. Le président devrait également informer le professeur que, s'il choisit de saisir de sa cause le comité local de griefs, il ne doit pas en même temps intenter des poursuites judiciaires ou faire de la publicité au sujet de la cause. (Voir partie A.)

6. *Le but du comité de griefs*

Le comité de griefs a pour but de décider si une cause est fondée et de faire des recommandations appropriées à l'exécutif de l'association en vue des dispositions à prendre si la médiation officieuse ne réussit pas. Le comité ne devrait pas avoir de pouvoirs exécutifs. S'il n'est pas d'accord avec les dispositions prises par l'exécutif au sujet de ses résolutions, il devrait les accepter ou démissionner. Le comité de griefs agit à la fois au nom des professeurs qui demandent son intervention et dans l'intérêt de l'ensemble de l'association locale. Quant au membre lui-même, il ne fait pas uniquement fonction de comité qui offre ses bons offices (c'est-à-dire un comité qui essaie d'amener les parties à s'entendre sans prendre parti lui-même); il est aussi l'avocat du professeur s'il juge que la réclamation est justifiée. Pour ce faire, il doit évidemment s'assurer que pareille intervention est justifiée. La façon normale de procéder consiste donc, premièrement, à faire une enquête officieuse qui lui permette de décider si l'appel est fondé. Dans son enquête, il doit tendre à être d'une justice scrupuleuse pour tous. Deuxièmement, il cherche à s'assurer que si, à son avis, il y a eu injustice, on fasse ce qu'il convient pour en atténuer les effets; troisièmement, si ses efforts échouent, il présente des recommandations à l'exécutif de l'association

des professeurs sur le bien-fondé de la cause et sur la procédure à suivre.

7. *Procédure applicable au comité de griefs*

Le comité n'est pas un tribunal officiel d'arbitrage et ne doit pas se comporter comme tel parce qu'il n'a pas les pouvoirs légaux d'un comité ou d'un tribunal pour exiger la présence de témoins et le dépôt de documents, et qu'il n'a pas non plus le pouvoir de protéger les témoins contre des ennuis subséquents.

a. Les réunions du comité devraient être à huis clos.

b. Un des membres du comité devrait faire fonction de secrétaire. Aucun étranger à la cause ne devrait être admis à entendre les délibérations du comité.

c. Le président devrait dresser un ordre du jour; il ne devrait pas être autorisé à écarter des causes qui font l'objet d'un appel écrit au comité.

d. Le comité devrait suivre la procédure approuvée par l'association locale; toute controverse relative à la procédure devrait être tranchée par le comité. Les membres de l'association sont protégés en ce que, s'ils le désirent, ils peuvent mettre en question la procédure et le comportement du comité de griefs, à une réunion de l'association locale, et peuvent adopter, à leur gré, un vote de confiance ou de non-confiance. Toutefois, le règlement de l'association ne devrait pas permettre qu'on revienne sur le fond d'une décision du comité de griefs parce que ce serait, en fait, une espèce de tribunal improvisé qui jugerait des cas particuliers sans procédure régulière et juste.

e. Normalement, le comité devrait examiner les mémoires et les documents. Il faudrait donner au réclamant et à toutes les parties intéressées un préavis raisonnable (deux semaines au maximum durant l'année universitaire régulière) du fait que le comité se propose d'étudier le cas et qu'il recevrait volontiers des énoncés écrits et des documents pertinents.

f. Si l'administration refuse de fournir des déclarations ou des documents, le comité devrait procéder sans ces renseignements et rendre une décision en fonction des renseignements dont il dispose.

g. Le comité peut, s'il le juge bon, entendre personnellement le réclamant et les autres parties intéressées. Dans ces cas, ceux qui témoignent devant le comité devraient avoir le droit d'être assistés ou représentés par un autre professeur, mais le comité ne devrait pas permettre de contre-interrogatoire ni permettre à d'autres parties d'assister au témoignage puisqu'il ne s'agit pas d'une procédure d'arbitrage.

h. Le comité peut n'importe quand, après avoir pris connaissance des témoignages écrits, terminer l'appel et recommander à l'exécutif de l'association de ne rien faire.

i. Après avoir entendu les témoignages, le comité devrait consigner ses décisions et faire des recommandations à l'exécutif. S'il juge qu'une injustice a été commise, il pourrait recommander:

i. que des instances soient présentées directement par l'exécutif de l'association au président ou à d'autres administrateurs supérieurs appropriés;

ii. la tenue d'une réunion générale de l'association en vue de faire ratifier la position du comité;

iii. l'accord de l'exécutif en vue d'un appel à l'A.C.P.U.;

iv. toute autre procédure qu'il juge appropriée.

8. *L'exécutif*

L'exécutif reçoit les recommandations du comité de griefs et décide ce qu'il y a lieu de faire. Si l'exécutif décide d'appuyer un appel auprès de l'A.C.P.U., cela ne devrait pas empêcher l'association locale de prendre en même temps des initiatives à l'université même. Il est probable que les intérêts du professeur seront mieux servis si l'A.C.P.U. et l'association locale agissent conjointement.

Si un professeur porte sa cause en appel auprès de l'A.C.P.U., l'exécutif devrait être prêt à énoncer clairement la position de l'association locale vis-à-vis du cas particulier. Cette déclaration devrait comporter une étude de la procédure suivie par l'université, des raisons mises de l'avant (ou leur omission) par l'université, et de l'équité de l'instruction de la cause. Elle devrait également comprendre tous les documents pertinents possibles.

9. *Recours à un ombudsman*

Le poste d'ombudsman devrait être considéré comme venant s'ajouter à l'adoption d'une procédure appropriée en matière de griefs et de conditions d'emploi. Un tel poste est tout particulièrement utile dans les grandes universités où les méthodes peuvent être satisfaisantes mais peu accessibles; cependant, dans certaines institutions, l'existence même d'un ombudsman a directement nui à l'instauration de mesures appropriées et amené les intéressés à trop tabler sur la sagesse et le temps d'un seul homme.

Approuvé par le bureau de direction,
3 avril 1971

Adopté par le Conseil,
le 14 mai 1971.

GUIDELINES CONCERNING GRIEVANCE PROCEDURE: RIGHTS AND RESPONSIBILITIES OF FACULTY MEMBERS AND FACULTY ASSOCIATIONS

Foreword

The Committee on Academic Freedom and Tenure of the C.A.U.T. has been receiving more and more official grievances from members of faculty and from faculty associations. Between 1960 and 1964, 30 complaints were recorded although none reached the stage of formal investigation. In the academic year 1969-1970 the Committee handled 89 grievances. By 1966 it was clear that the volume of work was escalating to the point whereby it was necessary for the C.A.U.T. to issue official guidelines concerning appointments and the conditions of employment. The guidelines officially adopted in 1967, have, from time to time, been amended in the light of experience. [1] However, the guidelines do not include recommendations in detail concerning the proper role of the individual faculty member and the local faculty association when problems arise. This document is an attempt to meet this problem.

The first responsibility of the faculty association is to ensure that the university has proper procedures and that these procedures are adhered to. If the faculty association has secured procedures and the effective use of them, it should have fewer legitimate complaints to deal with.

A. What should the faculty member do ?

1. *Private Representations*

If a faculty member believes that he has a grievance, he should in the first instance attempt to settle the matter himself in direct contact with the member of the administration concerned — normally his departmental chairman or his dean. Personal contact, however distateful, is usually preferable to an exchange of letters. Such representations should be made with the minimum possible delay. If an agreement is reached, there should then be an exchange of letters between the interested parties recording the agreement. [2]

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1. Edward J. Monahan, "Academic Freedom and Tenure and the C.A.U.T. — The First Twenty Years," **C.A.U.T. Bulletin,** with XVIII, 4 (1970); J. Percy Smith, "The Work of the Committee on Academic Freedom and Tenure," **ibid.**, XVII, 2 (1969); A. Berland, "On the Present State of Academic Freedom," **ibid.**, XVIII, 2 (1970); Daniel A. Soberman, "Tenure in Canadian Universities," **ibid.**, XIII, 3 (1965); René Hurtubise, "La stabilité d'emploi des professeurs d'universités de la province de Québec," **ibid.**, XIV, 3 (1966); George Whalley, ed., **A Place of Liberty : Essays on the Government of Canadian Universities,** Toronto : Clarke, Irwin and Co. Ltd., 1964.
2. If the faculty member is in any doubt concerning the merits of the proposed settlement, he should consult the president of the faculty association before agreeing in writing to the proposal.

2. *Appeal to the University Procedures*

Normally the faculty member should employ the procedures of appeal available to him at the university before formally appealing his case to the local faculty association, although he may ask the faculty association to maintain a watching brief. However, if the faculty member is in doubt about his rights, the merits of the procedures offered to him or possible solutions to his grievance, he should consult the chairman of the faculty association's grievance committee. The faculty member may also appeal to the faculty association to assist him in presenting his case to the appropriate university bodies, and the chairman of the faculty association grievance committee may suggest other faculty members who might be prepared to give such assistance although such faculty should not be members of the grievance committee of the faculty association. The faculty association must be free. however, to determine whether it should assign a faculty member to assist the complainant.

3. *Defective University Procedures*

If the procedures of the university do not meet the minimum requirements of equity outlined in the C.A.U.T. Policy Statement, or if for any other reason they seem inappropriate, the chairman of the grievance committee should consult with the C.A.U.T. Central Office before recommending that a faculty member accept the procedures offered to him by the university.

4. *Appeal to the Faculty Association*

If the faculty member decides to make an appeal to the faculty association, he should do so in writing. The faculty member should supply a full account in writing of the problem and include all relevant documentation. Suppression of evidence will help the faculty member neither with the administration nor with the faculty association. The faculty member should also indicate what steps he has taken to secure a remedy of his grievance and should tell the faculty association what solution he wishes to the problem, e.g. reinstatement, the retraction of a statement, etc. (See also the procedures in Section B.)

5. *Legal Redress*

The faculty member faces a choice between academic and legal redress of his grievances. If he chooses to try to secure redress through academic procedures, he may consult a lawyer concerning the merits of his case but his lawyer must not act for him in relation to the university or the C.A.U.T. so long as the case is in the hands of the faculty association and/or the C.A.U.T. If the faculty member does act through a lawyer, the

faculty association and the C.A.U.T. will normally withdraw from the case. If the faculty member has already acted through a lawyer, he is free to change his mind and request redress through academic procedures. In this case either the faculty member or his lawyer must write to the interested parties to inform them of the change of procedure. A faculty member may seek legal redress after he has exhausted the procedures of the university, the faculty association and the C.A.U.T., and he may, of course, at any time withdraw his case from the faculty association and the C.A.U.T. and take legal action against the university.

Notwithstanding the foregoing, should the procedures of the university or of the faculty association allow the member to be represented by legal counsel during a hearing on dismissal, he may be so represented at his own expense without prejudicing the status of his case before the faculty association or the C.A.U.T. Normally legal representation should not be permitted before committees on renewal, tenure or appeal committees within the university. In no event should legal technicalities be allowed to frustrate expeditious and just solutions to grievances.

The C.A.U.T. considers that it is best to seek academic solutions to academic problems:

> "Academic disputes should be settled by resort to equitable procedures available within the academic community. Resort should not be had to the courts except when these procedures have failed."

(C.A.U.T. Policy statement on Academic Appointments and Tenure, II. 6)

In most parts of Canada, the courts have been reluctant to recognize legally many of the rights that have been developed in universities and have held that professors possess few rights other than those spelled out in their contracts. Therefore, if a professor is consulting both a lawyer and the local faculty association, he is apt to get conflicting advice since the two parties operate on different premises. Furthermore, lawyers are expensive and neither the faculty association nor the C.A.U.T. is likely to help pay an individual member's legal fees. This is particularly the case if the faculty member initiates the legal action without consulting the faculty association or the C.A.U.T.

The faculty member may request legal advice from the faculty association. The executive of the association, at its discretion, may approach a member of the law faculty of the university concerned on behalf of the professor or, if no such faculty

exists at the university, it may request advice from the C.A.U.T. Neither the faculty association nor the C.A.U.T. can be bound to give advice concerning legal matters on the demand of a faculty member.

The C.A.U.T. has an Academic Freedom Defense Fund to be used at its discretion to pay legal fees in connection with important cases of academic freedom. Normally this fund would be used to assist professors against whom legal actions have been instituted, or for whom legal assistance is required owing to some special problem incurred in the defense of academic freedom. Faculty members may make application in writing to the Academic Freedom and Tenure Committee for support from this fund.

6. *Direct Appeal to C.A.U.T.*

A faculty member may appeal his grievance directly to the C.A.U.T. Central Office. Normally he should not appeal directly to C.A.U.T. until he has approached the local faculty association for assistance. In such a circumstance the faculty member must write a letter to the Executive Secretary of C.A.U.T. offering reasons and documentation to justify a direct appeal to C.A.U.T. The Executive Secretary, at his own discretion, after consultation with the Academic Freedom and Tenure Committee, may accept such a case or may refer it to the local association. If a case is accepted, the usual practice of the C.A.U.T. is to ask local associations for information and advice.

7. *Appeal of a Decision by the Local Faculty Association*

Once the local association has dealt with the case of an individual professor, he is free to appeal the judgment of the local association to the C.A.U.T. if he thinks that it is not just or equitable. The faculty member should provide full documentation. The C.A.U.T. normally advises the local association concerning grievances and solicits their position as well as that of the local faculty member. Such cases are normally reviewed by the Committee on Academic Freedom and Tenure, and the decision of that committee on whether or not to proceed with a case is final.

8. *Publicity*

If the faculty member wishes to use the good offices of the faculty association or to appeal his case to it, he should refrain from publicity concerning his case. He should not give interviews to the media nor should he attempt to leak information to the media. Generally speaking, publicity hardens stands and makes conciliation much more difficult.

A faculty member is, of course, free as a citizen to make whatever public statements he likes subject to the laws of the land, but the C.A.U.T. and the local faculty associations reserve the right to withdraw from cases where such publicity is generated. If the university or its officials make public statements concerning a case, then the faculty member, preferably after consultation with the faculty association, and the faculty association itself are free to reply. Furthermore if the university acts privately in an outrageous way, e.g. refusing to initiate proceedings in a reasonable period of time, the faculty association and the C.A.U.T. might, of necessity, have to make public their stand. The faculty member should not attempt by public speeches or other public means to secure general support in the student body. Similarly other faculty members and administrators should refrain from public declarations concerning the case. This does not preclude duly constituted student bodies at the department or university level from making responsible representations of their own concerning particular cases that may already be in the public domain nor should any faculty member be penalized or have his rights before the faculty association jeopardized by action on the part of students provided he has not incited the students to undertake public action on his behalf. [3]

9. *Malicious charges*

A faculty member who wishes to raise a grievance involving charges against another faculty member or a member of the university community has the professional obligation to ensure that such charges are temperately stated and substantiated so far as it is possible to do so. Neither the C.A.U.T. nor the faculty association can countenance personal vendettas or malicious attacks on third parties. The faculty member should realize that it is not good practice to arouse the antagonism of chairmen or other faculty members by personal attacks. (See also C.A.U.T. *Guidelines on Professional Ethics.*)

10. *Defamation (Libel and Slander)*

Faculty members should realize that other members of the faculty may in the course of their academic and administrative duties, be required by the terms of reference of their positions to make judgments concerning the merits of particular faculty members. These decisions are part of the normal process of the university, and are ordinarily immune to actions for defamation. Faculty members should not challenge such statements in the courts (or elsewhere) on the grounds of defamation

3. If the faculty association makes this allegation to justify refusal to take up a case, it should provide the faculty member with a fair hearing before making a final decision.

unless the faculty member can prove that a deliberate falsification was maliciously presented thereby causing serious damage to the reputation of the faculty member concerned. (See also C.A.U.T. *Guidelines on Professional Ethics.*)

11. *Student Participation*

If the faculty member wishes the faculty association or the C.A.U.T. to investigate his case, he must normally proceed through the procedures laid down by the university and by the faculty association. In some Canadian universities this involves the participation of students in certain of the structures which might consider the case in question. In such cases the faculty member should not object to the presence of students legally named to duly constituted bodies.

B. What should the Faculty Association do ?

1. The faculty association should assume a general responsibility for investigating faculty grievances carefully and promptly. Generally speaking the longer the delay in settling a grievance, the more difficult any settlement becomes. The procedure suggested below for the faculty association grievance committee should not be allowed to occasion undue delays.

2. The faculty association should have a grievance committee either elected by the association or appointed by the executive. If appointed, the executive should ensure representation of both tenured and untenured faculty. The chairman and members of the committee should not hold administrative posts (i.e. vice-president, dean, chairman of department, etc.) which might cause a conflict of interest in the carrying out of their duties. The association should consider the possibility of staggered terms so as to ensure continuity. In small universities, it may not be practical to have a separate grievance committee. In this case the work should be done by the executive.

3. The grievance committee should be accessible to any faculty member. If the faculty member is not a paid-up member of the association, he should be encouraged to join. Nevertheless, the faculty association must be interested in all aspects of academic freedom and tenure on the campus and should, therefore, consider all cases put before it.

4. The faculty member concerned should first discuss his case with the chairman of the grievance committee. The chairman may recommend:

   a. that the faculty member pursue certain procedures within the university before turning to the grievance committee.

Note : Normally in cases of non-renewal of contract, denial of tenure and dismissal with cause, if the university has offered to follow the C.A.U.T. Statement on Academic Appointments and Tenure, the chairman of the grievance committee will recommend no further action by the grievance committee except to maintain a watching brief to ensure that the procedures are carried out fully and fairly.

b. that the chairman of the grievance committee attempt informal mediation between the faculty member and the relevant administrative officer.

Note : The faculty association should have an understanding with the administration of the university that the chairman of the grievance committee has access to the administrative officers, including chairman of departments. Informal mediation usually means private talks between the chairman of the grievance committee and the administrative officer concerned without either the complainant or other witnesses being present. In such discussions all possible solutions may be canvassed whether or not they have been officially approved by the parties in question, but the chairman of the grievance committee must not indicate that a particular solution is acceptable to the complainant unless the complainant has so agreed. At the close of informal mediation, the chairman of the grievance committee should record in writing his understanding of the results, either positive or negative, and confirm these with the administrative officer concerned. The simplest way is a letter saying — "This is to confirm that at our meeting on 2 January 1482, we agreed that . . . *or* that we were unable to reach any agreement concerning the case of Professor X." The chairman of the grievance committee may also decide to pursue informal mediation at a higher administrative level. The complainant must be kept informed of the actions of the chairman of the grievance committee on his behalf. If the faculty member rejects a solution resulting from informal mediation, he may appeal in writing to the full grievance committee. A faculty member also has the ultimate veto in that he may withdraw his complaint from the faculty association.

c. that the faculty member has no case.

Note : In this case, if the faculty member rejects the advice of the chairman of the grievance committee, he should have the right to put his case to the grievance committee although it should be pointed out to him that the opinion

of the chairman of the grievance committee will also be put before the committee.

d. that the case be heard by the full grievance committee.

5. Before any of the steps listed below are undertaken, the faculty member must lodge a complaint in writing with the faculty association and should provide all relevant documentation insofar at it is in his possession. It is the duty of the chairman of the grievance committee to ensure that the documentation is as complete as possible and he should request such information from the faculty member and from the administration where necessary. The chairman should also inform the faculty member that if he chooses to put his case before the local grievance committee, he must not at the same time pursue legal action or create publicity concerning the case. (See Part A)

6. *The purpose of the grievance committee*

The purpose of the grievance committee is to decide whether or not there is a case and to make appropriate recommendations to the executive of the association for action if informal mediation proves unsuccessful. The committee should not have executive powers. If it disagrees with actions taken by the executive concerning its resolutions, it should accept these actions or resign. The grievance committee acts both on behalf of the faculty members who appeal to it and in the interest of the faculty association as a whole. Insofar as the individual faculty member is concerned, it acts not merely as a good offices committee (i.e. a committee which brings the parties together without itself taking a side) but as an advocate for the faculty member when it judges that there is a legitimate grievance. In order to do so, it must of course satisfy itself that such action is warranted. Its normal procedure therefore is first to make a sufficient informal investigation to enable it to decide whether the appeal has a proper basis in fact. In this investigation it must attempt to be scrupulously fair to all concerned. Second, it attempts to ensure that if, in its opinion, an injustice has been done, an appropriate effort to mitigate it is made; third, if such efforts fail, it makes recommendations to the executive of the faculty association concerning the merits of the case and possible procedures.

7. *The procedures of the grievance committee*

The committee is not a formal arbitration board and should not be conducted as such because it does not have the powers of a legal arbitration or a court to require the presence of

witnesses and the production of documents nor does it have the power to defend witnesses from subsequent victimization.

a. The meetings of the committee should be private.

b. One of the members of the committee should serve as secretary. No outsider should be permitted to hear the deliberations of the committee.

c. The chairman should prepare an agenda; he should not have the power to exclude cases which have been appealed in writing to the committee.

d. The committee should follow such procedures as have been approved by the faculty association, but in any dispute concerning procedure, the committee should make the final decision. Members of the association have the safeguard that they may, if they so desire, question the procedures and conduct of the grievance committee at a meeting of the faculty association and may vote confidence or no confidence as they see fit. However, the rules of the association should not allow for review of the substance of a decision of the grievance committee because this would, in effect, turn the association into a species of drumhead court, deciding the merits of particular cases without a regular and fair procedure.

e. Normally the committee should proceed through the examination of written briefs and documentation. The complainant and all interested parties should be informed with reasonable notice (two weeks maximum during the regular academic year) that the committee is going to consider the case and would welcome written statements and relevant documentation.

f. If the administration refuses to supply statements or documents, the committee should proceed without such information and make a decision on the basis of the information available to it.

g. The committee may, if it so decides, hear the complainant and other interested parties in person. In such cases, those appearing before the committee should have the right to be assisted or to be represented by another faculty member, but the committee should not allow cross-examination or the right of other parties to be present during the testimony since his procedure is not an arbitration.

h. The committee may at any time, after seeing the written evidence, terminate an appeal proceeding and recommend to the executive of the association that no action be taken.

i. When the evidence has been heard by the committee, it should record its decisions and make recommendations to the executive. If it decides that an injustice has been done, it could recommend:

i. direct representations by the executive of the association to the president or other relevant officials;

ii. the calling of a general meeting of the association to consider ratification of the committee's position;

iii. the endorsement by the executive of an appeal to C.A.U.T.;

iv. whatever other procedures seem appropriate.

6. *The Executive*

The executive receives the recommendations of the grievance committee and must decide on what action to take. If the executive decides that it wishes to endorse an appeal to the C.A.U.T., this should not preclude simultaneous action by the faculty association on the local campus. The faculty member is likely to be best served where the C.A.U.T. and the local faculty association work together.

If a faculty member appeals his case to the C.A.U.T., the executive should be prepared to supply a clear statement as to the position of the local association concerning the particular case. This should include some discussion of the procedures used by the university, the reasons offered (or not offered) by the university, and the equity of the proceedings. It should also include whenever possible relevant documentation.

7. *The use of an ombudsman*

The post of ombudsman should be considered as additional to the adoption of proper procedures concerning grievances and conditions of employment. This post is particularly useful in large universities where the procedures may be adequate but remote; however, in some institutions the existence of an ombudsman has directly inhibited the growth of proper procedures and has led to an undue reliance on the wisdom and time of one man.

Approved by the Executive
3 April 1971

Adopted by the Council
14 May 1971.

DIRECTIVES CONCERNANT LES RÉDUCTIONS DES NOMINATIONS DE PROFESSEURS POUR DES RAISONS D'ORDRE BUDGÉTAIRE

1. La responsabilité primordiale de l'université est de s'assurer que les priorités académiques demeurent toujours au premier plan, surtout en ce qui a trait à la qualité de l'enseignement et de la recherche. Quand elle fait face à des restrictions budgétaires, l'université doit assurer la primauté de ses fonctions éducatives en ne recourant à des réductions de postes qu'après avoir effectué des réductions raisonnables dans tous les autres secteurs budgétaires comme l'administration, la publicité et les réserves budgétaires.

2. En principe et afin de s'assurer que, lorsque des réductions seront effectuées pour des raisons financières, les décisions ne soient pas prises dans une atmosphère de crise, sur une base *ad hoc,* l'association des professeurs devrait insister sur une forte représentation des professeurs au sein des comités du budget de l'université et la publication maximale des renseignements budgétaires. Chaque université devrait entreprendre un programme de prévisions, à court et à long terme, de sa situation budgétaire et les mettre à la disposition des comités du budget. Les représentants des professeurs qui siègent aux comités du budget doivent veiller particulièrement à ce que de bonnes prévisions d'ordre académique soient faites afin de réduire les possibilités de crises soudaines qui entraînent des réductions.

3. Chaque fois que l'administration d'une université propose de réduire les postes de professeurs pour des raisons d'ordre budgétaire, l'association des professeurs doit, au nom de tous les professeurs, exercer une étroite surveillance et prendre les mesures les plus sérieuses afin d'empêcher les administrateurs universitaires d'attaquer faussement la situation économique du corps professoral. L'association doit de plus s'assurer du bien-fondé des raisons apportées aux professeurs dont le contrat ne pourra être renouvelé et de l'équité des procédures suivies pour arriver à cette décision.

4. La représentation des professeurs au sein des comités du budget ne devrait toutefois pas empêcher l'association locale d'agir indépendamment, puisque cette représentation ne garantit aucunement que la position du corps professoral sera entendue avec impartialité.

A. L'association des professeurs devrait en particulier tenir compte des aspects suivants et les incorporer, tous ou en partie, dans une entente officielle avec l'université.
   1) L'association des professeurs devrait avoir et se prévaloir du droit de présenter ses vues au Bureau des gouverneurs, au

recteur et aux instances académiques appropriées sur tous les aspects et conséquences des coupes budgétaires envisagées.

2) Il conviendrait d'adopter des procédures officielles semblables, dans l'ensemble, à celles dont on donne un résumé à la section B.

3) En toutes circonstances le préavis ne devrait jamais être moindre que celui prévu dans l'*Énoncé de principes relatif à la nomination des professeurs et à la permanence de l'emploi*. L'association locale devrait être prête à négocier des indemnités de départ équitables.

4) Afin de permettre aux départements de faire une sélection juste parmi les professeurs à l'essai, dont les contrats arrivent à échéance au cours d'années différentes, l'université devrait envisager de répartir les réductions de postes de professeurs sur une période assez prolongée pour englober la durée des nominations de tous les professeurs sans la permanence.

5) L'université devrait faire tous les efforts possibles pour utiliser les mises à la retraite normales, les retraites volontaires anticipées et les congés, tant du corps enseignant que du personnel administratif, afin de réduire les répercussions des réductions de postes.

6) L'université devrait, chaque fois que c'est possible, faciliter la mutation de professeurs, avec ou sans la permanence, d'un département à un autre, ou d'une faculté à une autre, afin de diminuer les répercussions des réductions de postes.

7) L'association locale devrait être prête à examiner la politique des engagements subséquents afin de s'assurer que les réductions de postes pour des raisons d'ordre budgétaire furent effectuées de bonne foi.

B. Nous recommandons les procédures suivantes:

1) Les instances académiques supérieures devraient discuter officiellement les réductions de postes que l'université envisage d'effectuer pour des raisons d'ordre budgétaire, et elles devraient décider si ces réductions se feront en vertu d'une révision des priorités académiques ou d'un calcul strictement mathématique. Il est évident que, puisque ces instances supérieures autorisent les nouveaux programmes de l'année universitaire, c'est à elles que revient la responsabilité de les reviser ou de les abolir. Elles devraient donc, pour arriver à prendre une décision fondée, être en possession de tous les renseignements budgétaires nécessaires. Si cette décision entraîne une réduction des nominations du corps enseignant, il revient également aux autorités supérieures d'en fixer le nombre et la répartition générale. C'est à la lumière de ces priorités établies par les instances supérieures que les facultés

concernées (Arts, Commerce, etc.) devraient ensuite déterminer la répartition entre les départements.

2) Si un département doit réduire le nombre des nominations du corps enseignant pour des raisons d'ordre budgétaire, l'assemblée départementale devrait étudier la question très soigneusement et s'assurer d'une entière consultation. Le comité du département relatif aux nominations et à la permanence de l'emploi [1] devrait formuler ses recommandations au sujet des postes susceptibles d'être retranchés, ainsi que des professeurs que ces mesures affectent, après avoir considéré tous les aspects quantitatifs au niveau du département.

3) Les professeurs dont le contrat ne pourrait être renouvelé pour des raisons budgétaires devraient être protégés par la section A. 2 (b) de l'*Énoncé de principes relatif à la nomination des professeurs et à la permanence de l'emploi*:

> Une nomination à l'essai doit recevoir toute la considération appropriée en accord avec des procédures clairement définies et ouvertement publiées. La décision d'un département quant au renouvellement doit se prendre après consultation formelle et selon un protocole établi d'avance, de préférence en comité départemental dûment élu. Un membre du corps professoral doit être avisé de la date où son cas sera soumis à revision et doit avoir l'occasion de présenter un témoignage oral ou écrit. Si le candidat le demande, il est en droit d'exiger de recevoir par écrit les motifs qui ont justifié la décision de ne pas renouveler. De tels motifs peuvent comprendre des considérations budgétaires et les besoins d'un département tout autant que les qualifications individuelles de la personne concernée. Des mécanismes d'appel acceptables doivent être prévus. Normalement l'appel d'une décision de ne pas renouveler doit se fonder, soit sur un manquement aux procédures établies ou sur une preuve évidente de parti pris ou d'inconséquence dans les raisons qui ont motivé la décision.

Toutefois, il n'est pas suffisant de simplement déclarer qu'un contrat n'est pas renouvelé pour des raisons d'ordre budgétaire. L'université doit avoir suivi une procédure pour déterminer la politique et son application spécifique pour certains professeurs, en conformité avec les sections B 1-3 de ce document.

Adopté par le Conseil
le 14 mai 1971.

1. Dans les départements assez considérables, il peut être préférable de créer un comité « ad hoc » de professeurs avec ou sans la permanence. Dans les départements de cinq personnes ou moins, il serait sage de coopter des professeurs en dehors du département en suivant des procédures approuvées.

GUIDELINES CONCERNING REDUCTIONS IN ACADEMIC APPOINTMENTS FOR BUDGETARY REASONS

Preamble

1. The first duty of the university is to ensure that its academic priorities remain paramount, particularly in regard to the quality of instruction and of research. When faced with budgetary restrictions the university must ensure the primacy of its educational functions by considering cuts in academic posts only after reasonable cuts have been made in all other budgetary areas such as administration, publicity, and budgetary reserves.

2. As a matter of principle and in order to ensure that decisions on cutbacks for financial reasons are not made on an *ad hoc* basis in an atmosphere of crisis, the faculty association should insist upon strong faculty representation on university budget committees and the publication of maximum budgetary information. Every university should undertake both short-term and long-term forecasts of its budgetary position, and should make such forecasts available to budget committees. Faculty representatives on budget committees should pay particular attention to the need for proper academic forecasting in order to lessen the possibility of sudden crises leading to cutbacks.

3. Whenever the university administration proposes to reduce faculty posts for budgetary reasons, the faculty association should act as the watchdog of the faculty. It must take the most serious precautions to prevent administrations from attacking the economic position of the faculty on spurious grounds. It must also ensure that reasons offered to individual faculty members for non-renewals are valid and that the procedures used in arriving at such decisions are equitable.

4. Faculty representation on budget committees should not preclude an independent stance by the faculty association, since such representation is not a guarantee that the faculty position will be fairly heard.

A. The faculty association should take into consideration the following points, and should include some or all of them in a formal agreement with the university:

   1) The faculty association should have and exercise the right to make representations to the Board, President and appropriate academic bodies on all aspects and consequences of proposed budgetary cutbacks.

2) Formal procedures substantially similar to those outlined in section B should be established and followed.

3) In all circumstances notice should never be less than that provided in the *Policy Statement on Academic Appointments and Tenure,* and the faculty association should be prepared to negotiate equitable severance benefits.

4) The university should consider spreading cutbacks in faculty appointments over a time period long enough to cover the appointment of all untenured staff in order to allow departments to make a fair choice between probationary appointees whose contracts terminate in different years.

5) The university should make every effort to utilize normal retirements, voluntary early retirements, and leaves for both academic and administrative personnel to mitigate the effect of cutbacks.

6) The university should, wherever possible, facilitate the transfer of members, tenured and untenured, from one department to another or from one faculty to another to mitigate the effect of cutbacks.

7) The faculty association should be prepared to scrutinize subsequent hiring policies to ensure that cutbacks for budgetary reasons were carried out in good faith.

B. The following procedures are recommended:

1) The senior academic body should formally discuss the plans of the university for cutbacks owing to budgetary reasons, and it should make a decision as to whether these cuts will be made by a revision of academic priorities or by a strictly arithmetic formula. If it chooses to revise academic priorities, it is clear that since it is the body which formally sanctions new academic programmes, it is also the body which must revise or abolish such programmes. The senior academic body, therefore, should be provided with adequate budgetary information in order to reach informed decisions. If the decision of the senior academic body involves a reduction in faculty appointments, it should determine also the number and general distribution of such reductions. The faculty concerned (Arts, Commerce, etc.) should determine the distribution between departments in the light or the priorities established by the senior academic body.

2) If a department is required to reduce the number of its academic appointments for budgetary reasons, the departmental assembly should review the matter with the greatest

care and with full consultation. The standing departmental committee on appointment and tenure [1] should make recommendations in the light of the department numbers, about those posts which might have to be cut and about the individuals concerned.

3) Faculty members subject to non-renewal for budgetary reasons should have the protection of section A. 2 (b) of the *Policy Statement on Academic Appointments and Tenure*:

> Proper consideration of the renewal of a probationary appointment should be assured through clearly defined and well-publicized procedures. The decision of a department on renewal should be made with proper consultation on a systematic basis, preferably through an elected departmental committee. The faculty member should be advised when a review of his appointment is to take place, and he should be given the opportunity to present written or oral evidence. The candidate should be given reasons in writing for non-renewal if he requests them. It should be understood that such reasons might include consideration of budgetary and departmental needs as well as of the specific qualifications of the individual concerned. Suitable provision for appeal should be available. Normally an appeal from a recommendation of non-renewal should be based either on a failure to follow proper procedures or on evidence of bias or inconsistency in the grounds for the recommendation.

However, it is not sufficient simply to declare that a contract is not being renewed for budgetary reasons. The university must have followed a procedure to determine both the policy and its specific application to particular faculty members consonant with sections B 1-3 of this document.

Adopted by Council
14 May 1971.

1. In some larger departments and **ad hoc** committee of tenured and untenured faculty may be preferred. In departments of five or less it would be wise to co-opt faculty outside the department according to agreed procedures.

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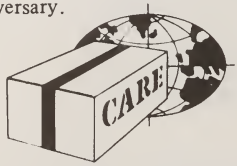

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